

COUNCIL MEETING

AUGUST 22, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, August 22, 2012 at 9:11 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Excused: Honorable KipuKai Kuali'i

Council Chair Furfaro: I have a memo circulated regarding Councilmember Kuali'i's attendance today. He is out ill, and at the same time, we would like to note that I did receive a letter from him earlier regarding a possible conflict of interest, regarding 2012-348 for the August 22nd meeting. So I have both of those documents for the Clerk.

APPROVAL OF AGENDA.

Council Chair Furfaro: There is a correction to the text on communication C 2012-348. It should read, "Requesting Council approval to include the following proposals in the 2013 Hawai'i State Association of Counties Legislative Package," and not the County Legislative Package. Members, would you so note that correction and can I ask for a motion and second to approve the agenda.

By unanimous consent, the agenda was amended to correct the wording of C 2012-348.

Mr. Chang moved for approval of the agenda, as amended, as circulated, seconded by Mr. Rapozo, and unanimously carried.

MINUTES of the following meetings of the Council:

August 8, 2012 Public Hearing re: Bill No. 2440
March 14, 2012 Council Meeting

Mr. Rapozo moved to approve the Minutes as circulated, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: We'll go to the Consent Calendar. Is there anyone who wants to speak on the Consent Calendar to use your three minutes of time now on those items or any other items on the agenda? Seeing no one, I guess we would like a motion to receive the Consent Calendar.

CONSENT CALENDAR:

C 2012-342 Communication (08/06/2012) from Councilmember Kualii, providing written disclosure of a possible conflict of interest and recusal on C 2012-335, relating to the Kaua'i VOCA Expansion federal funds grant application on the August 8, 2012 Council Meeting Agenda and deferred to the August 15, 2012 Special Council Meeting, because he is employed by the YWCA, which receives sub-grant funds from the Kaua'i VOCA Expansion Program: Mr. Chang moved to receive C 2012-342 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2012-343 Communication (08/15/2012) from Councilmember Kualii, providing written disclosure of a possible conflict of interest and recusal on C 2012-336, relating to the Keiki P.O.H.A.K.U. Diversion Program grant application request, and C 2012-337, relating to the Office of Prosecuting Attorney's State funding for the Victim Witness Program, on the August 15, 2012 Special Council Meeting, because he is awaiting an Advisory Opinion from the Board of Ethics regarding his participation in grant requests from the Office of the Prosecuting Attorney: Mr. Chang moved to receive C 2012-343 for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2012-228(b) Communication (07/25/2012) from the Mayor, transmitting for Council consideration, the Cost Control Commission's recommendation to increase the Real Property Minimum Tax amount, Section 28.05 of the Kaua'i County Charter. Mr. Chang moved to receive C 2012-228(b) for the record, seconded by Mr. Rapozo, and unanimously carried.

C 2012-344 Communication (08/06/2012) from the Executive on Transportation, requesting Council consideration to amend the Fiscal Year 2012-2013 Operating Budget by transferring a total of \$310,000.00 from the OPEB accounts within the Transportation Agency, Fire Department, and Police Department, to the Agency's Automobiles line item to fund the required 20% local matching funds for the purchase of vehicles using Federal Transit Administration Section 5309 grant funds. Mr. Chang moved to receive C 2012-344 for the record, seconded by Mr. Rapozo, and unanimously carried.

Council Chair Furfaro: On a point of personal privilege, I would like to make my own request for today, and we had Mr. Rapozo, Lenny Rapozo, who is away due to a family need in Honolulu, but I would like to take, since the Engineering Department is here, I would like to take them first today to talk about the opportunities that they were given to review the blueprints on the Kilauea Gym. Councilwoman, would you like to be at the table for this discussion? So you have no problem with taking the gym first?

Ms. Yukimura:

No.

Council Chair Furfaro:

Thank you very much. Clerk, may I have you read the item?

C 2012-222 Communication (04/26/2012) from Council Chair Furfaro, requesting the presence of the County Engineer and the Chief of Buildings to

provide an update on the repair and maintenance of the Kilauea Gym as it relates to the leaking roof, floor damage, and corrective action that has occurred to address the roof and floor.

Council Chair Furfaro: Before I suspend the rules, ladies and gentlemen, I want to reconfirm we are having a discussion with the Building Division, as well as Mr. Rapozo, and the way this was deferred was based on the fact that the Building Department had not had an opportunity to review the plans that were shared with the Parks Department. And so I would like to focus this portion of the discussion on the Engineering comments and the blueprints at which time I believe they have had enough time to review and give us their comments on the changes for the Kilauea Gym. So on that note, I will suspend the rules. Larry and Doug, may I ask you to introduce yourselves?

There being no objections, the rules were suspended.

LARRY DILL, County Engineer: Good morning, for the record Larry Dill, County Engineer.

DOUGLAS HAIGH, Chief of the Building Division: Douglas Haigh, Chief of the Building Division.

Council Chair Furfaro: Doug, the question that I summarized, have you been able to look at these blueprint changes that the Parks Department had sent over to you folks.

Mr. Haigh: We have met with the Parks Department to discuss the Kilauea Gym conditions, and in conjunction with the Parks Department, we have determined that it will be best to wait on the door and construction until the new roof study is complete. A key element in assuring the best waterproofing for the door is a proper door seal. We intend to modify the door location and this modification will extend the concrete into the building. This impacts the existing wood floor. And the work should be integrated with the wood floor work. We do not want to start the wood floor work until the roof has been studied and any necessary corrections made. So that is what the Parks Department, the Director of Parks has created a task force to work on the Kilauea Gym. This task force, I will be participating as a representative of the Building Division and the facilities managers. So we are moving, going as quickly as we can to move forward with hiring an appropriate professional, and we are looking at integrating everything together within one consultant where we will work on analyzing the roof, making--getting plans for any revisions, modifications, corrections that we need to make to the roof and how best to design protection for the doors as far as roof protection. How best to design the doors themselves so that we assure that we have an extension of the concrete and running a concrete edging along the entire wall on that side of the gym, where we have the wind-driven rain to ensure separation from intrusion of moisture and the wood floor. Then we want to determine how to proceed best with the wood floor repairs and refinishing of the wood floor. So our hope is to get an consultant on board as soon as possible, and have this work done, so that we can include in the CIP budget for next year all the corrections to get the Kilauea Gym to address the two issues of water intrusion into the building and a repaired upgraded...well, repaired wood floor.

Council Chair Furfaro: Larry, I have been on the Council ten years and this has been a 10-year project as far as I'm concerned. And I am wanting to

know a timetable, if you are asking for this deferral again. I am certainly not going to wait until next year's budget to find out where we put the funds. If you need money for it now, let us do a money bill, but I want to hear your feedback on this and I want you to know how disappointed I am. I am extremely disappointed in this process for the Kilauea Gym and we have had the auditor's experts tell us about the doors that -- the showcase doors that face the Ko'olau side and there is obviously water coming in from that side. But we are going to do another study, I understand your request. But can you be more specific with a timetable? Can you understand, we are not going to wait another ten months for a budget item?

Mr. Dill: Chair Furfaro, I appreciate your concerns and this has taken a long time. We continue to monitor the gym and we do feel it is appropriate to look at these things comprehensively, to make sure those roof issues, floor issues, door issues, window issues get addressed as a whole by a consultant instead of trying to leave some issues. We feel it's appropriate to look at them as a whole by one consultant and get that work done. As we are monitoring the building, the damage that is there is not increasing significantly. So we feel that the time taken to do this study is worthwhile and will not result in increased damages to the building to be addressed or the scope of work to increase while we're doing the study. We can certainly, once we get the estimate of what the study comes up with the scope of work and estimated costs will be, we can certainly come back with a money bill in advance of next year's CIP.

Council Chair Furfaro: I appreciate that and a critical path once you have had comments and Larry and Doug, I want you to know that we want a critical path, so we can mutually agree when we are going to get this done, if we are waiting for these consultants. That we want to be realistic in the timetable, but we want to hold you accountable for the timetable. Mr. Rapozo?

Mr. Rapozo: Thank you. Doug, you mentioned task force, who is on this task force?

Mr. Haigh: As I mentioned the Director of Parks, his key facility managers. CIP Coordinator.

Mr. Rapozo: Who is the CIP Coordinator?

Mr. Haigh: Parks CIP Coordinator, William Trujillo.

Mr. Rapozo: Is the CIP Coordinator?

Mr. Haigh: That is my understanding of his position. He may have a different title, but that is my understanding of his primary function at Parks.

Mr. Rapozo: Okay. So Tommy Contrades, he left, but was that the same position?

Mr. Haigh: No, this is a Park's employee, not a Mayor's office employee.

Mr. Dill: He manages the Park's CIP.

Mr. Rapozo: Who else is on the task force?

Mr. Haigh: Right now that is who is on it?

Mr. Rapozo: Two members?

Mr. Haigh: No, I said his facility managers. At a meeting yesterday, the three managers and I am not sure who will participate continually. And I assume probably the Deputy Director of Parks will be attending also.

Mr. Rapozo: Okay. And again, I share the Chair's frustration, but one of the problems that I see and I have brought this up several times is why would this be a Park's project and not a Buildings Division project? Just from the last meeting to this meeting we saw the problems, because Larry, you are in charge of Public Works. Lenny is in charge of Parks, and so Parks is working on a building, and then you have to send all of that work to Building, and Buildings may disagree and I am hearing that the lean-to and suggestions made to Parks is not going to be done because of whatever reason. But why would not -- and if someone can answer that -- why would the building maintenance not be covered by Buildings Division? We have wasted a lot of time because it is between two departments and I do not see how the Parks Director should be involved with building maintenance. That is not their forte, they are Parks. So if someone could answer the question how this ended up in Parks, and now there is additional delays because Parks still has to work through Buildings and in my opinion it's a structure. It is a building. Maybe you can answer that, Larry.

Mr. Dill: I do not have a great answer, to be honest. It is a Park's facility and Park's CIP. We certainly have supported them in the effort with Doug and Building's Division involvement. I could not tell you why it is the Park CIP Budget and not Building Division budget.

Mr. Rapozo: Despite where the funding comes from, the management of the project, we saw this at the last meeting when Parks said we sent over the plans and Buildings said we never got it. It is incredible. When was that? Two weeks ago? It was deferred July 25 -- I am sorry, July 25 and we are here today and still no real answers. I mean, what you told us today is what we kind of figured out last meeting. What does it take to put buildings projects in Buildings and park projects in Parks? I do not understand the logic and it is causing huge delays that I believe are unnecessary and the public is just -- I feel sorry for the Kilauea community because they keep hearing the same thing and I think Mr. Furfaro expressed that as well. What does it take to get a Building's Division project into the Buildings Division?

Mr. Haigh: I can address that a little bit in that Parks used to be part of Public Works and they created a separate division. Within that division they indicated a CIP responsibility. So Parks manages their budgets for their facilities. And they do many CIP projects, building projects, building-related projects for their facilities. Well, maybe not many, but they -- while it is a building, it is still their managers who are overseeing it, and it is their funds that get applied to improvements to it. And they acquire the CIP funds and then they have the personnel there created within their department to manage those types of projects. We are willing and we are all part of the County Government and we are more than willing to participate and share and provide your expertise and we provide our maintenance. Over the years there has been a lot of discussion of creating your own

maintenance side within Parks. So there has been this slow development in Parks as a full stand-alone department. Now the maintenance side is still with us and we support them as best as we can. And so we really are a support role for them. Because they are the ones who control that facility and they are the ones who are directly involved with the community on that facility. So they best know what the community needs are rather than the Building Division. Technically on any repairs and improvements to the buildings, we are there to help them. And in this case, you know, you have brought the division head in as part of the task force to help them move forward and expedite this project and we provide that. We work closely with Parks on a lot of things, but they are really the primary agency.

Mr. Rapozo: Well, you call it "support," I call it "duplication of service." We have two departments working on one project and it is not working, I guess. If it was working, that would be one thing but we have been battling this thing for a long time, and I use the analogy, the Police Department has police cars and when they need major repairs it goes to the County Repair Shop, because that is who takes care of the fleet.

Mr. Dill: But they also have a fleet manager.

Mr. Rapozo: Correct, and they do minor services, like the Parks Department. I do not have a problem with them servicing the parks, but when we have a building problem, like this one, this is massive. This is a structure. And this is just my opinion, that project should be in Buildings, because it is a building. And whether you separate Parks and whatever and you want to create... again, I will just say it is just duplication because Parks has to do their recommendations and then goes to Buildings, and Buildings says that is not what we want. If, in fact, Parks was the true manager, why would not the lean-to and other suggestions that they had made, that should have been implemented already. I look at that as a project. Seriously, but now it went to Buildings and Buildings has an opportunity to look at it and say no, let us not do that and let us get a consultant and figure out what is really going on. And I agree. I would not fix the floor until we find the problem. But you are saying that the damages are not that much right now, yeah, because we have not had a huge rain. The old joke, if it is not raining you are not going to get wet, but when the rain comes, that is when the damage will occur. So I do not know the structure and it is obviously out of our jurisdiction to say no, Buildings you take on this project. But I am hoping that the message is heard that hey, let us try not to duplicate and add another level of bureaucracy into a project that may not be that complicated, and I think the suggestion that Mr. Rapozo had of the lean-to and temporary facia was reasonable. I am not an engineer or an architect, it would have been a bandaid fix, but it would definitely, at least temporarily would have solved the problem of the gym getting wet. That is all I have, Mr. Chair. Thank you.

Council Chair Furfaro: Mr. Bynum?

Mr. Bynum: The part of the floor that is damaged, is that impacting the usability of the facility?

Mr. Haigh: My understanding is that we have two areas of damage. In the play court itself there is warpage in the floor. My understanding there are no safety concerns with that condition. The damage that is related to the doors is...what is happening is the moisture comes in and seeps under the doors and gets to the wood. And probably, this has been ongoing probably since it was built

eighteen years ago, and as the wood gets moist, it tends to rot a little bit and turns black. So we have blackened floor along the edge of the gym floor. That damage is not a safety—I deferred to the managers, and in our meeting yesterday the managers said, “We do not see a safety concern right now.”

Mr. Bynum: The facility is still being used by the community?

Mr Haigh: That is correct.

Mr. Bynum: Thank you.

Council Chair Furfaro: Larry, I am going to close this discussion, just a couple of comments. What do you think the value of the Kilauea gym is total?

Mr. Dill: \$1.5 million.

Council Chair Furfaro: So Larry, the gym shows up on the County's assets, okay? And if you read the description and expectations of the County Engineer, those types of assets are in your jurisdiction. You guys are confusing some basic accounting principles. Repair and maintenance in the Parks Department, fix a toilet seat, repair a light fixture, okay? I can understand that scope. That is repair and maintenance. This building is a significant asset of the County of Kaua'i and, by the way, it just happens to be in my hometown, okay? So it needs some urgent attention. I want a critical path. I want a reporting system. I am going hold you responsible in the Engineering Department to manage building assets. I do not care how you guys do it. Structurally, you reallocate responsibility to the Parks Department and so forth. There is a major difference between "asset management" and "repair and maintenance." This is a serious asset for our community. So I would like you to take our comments for what I am saying them on face-value. Be involved in it.

Now are there any other reports? You have at least two reports from me from my visit from the Kilauea Gym that shows the difference on the floors being concave versus convex. The show doors, it has been discussed in many times the dialogue over many years. In fact, I also reported to you that typically the gym floor gets lifetime warranty only for about twenty years and the floor has been down eighteen now. So make sure someone makes an evaluation of the floor in general. But I do not know how to say more than – let us really understand, there is some urgency here. This has been going on for eighteen years. The community expects it and yes, we might say no one had a problem, but we know we have had at least one broken leg in the gym from a trip and fall. It needs our attention, Larry. Larry, I hope you understand where I am coming from. You as the County Engineer, you have the authority to close right-of-ways to the beach if they are dangerous. You have the requirement to oversee county assets, and assets are simply very different from normal repair and maintenance. To that degree I agree with Doug, but this is a major asset of our community and that comes under your jurisdiction. So let us share with you folks this request. When do you think is fair and reasonable for you to come back and tell us that you have a handle on the scope, you have a handle on the critical path and so forth? Are we taking a month from now? What do you think? You give us the date.

Mr. Dill: As you mentioned we are pressing to get the study done and get a consultant on board to get that work done. So optimistically we hope to get that accomplished six to nine months.

Council Chair Furfaro: Six to nine months?

Mr. Dill: To get it contracted and complete the work?

Council Chair Furfaro: I will tell you right up front, to me that is unacceptable. That is your date and I am going to press it. I am really going to press it. We have been more than generous in allocating time to you folks. So let us agree in eight months, but can we check in with you guys in four months?

Mr. Dill: Certainly.

Council Chair Furfaro: So we'll have this reappear in four months and we are going to hold you to an eight month conclusion as to what the action plan is. Fair enough?

Mr. Dill: Yes, sir.

Council Chair Furfaro: We will see you in four months.

Mr. Rapozo: I have one more question, Mr. Chair?

Council Chair Furfaro: Mr. Rapozo, I am going to give Councilmember Yukimura the floor first. I am going to give it to you first.

Ms. Yukimura: All right. What do you envision as the time that the problem will be solved?

Mr. Dill: I understand the question. I respect it, but until we find out what the consultant comes back with, it is difficult to answer, because we do not know what the scope is that they will come up with.

Ms. Yukimura: You do not have a sense of the type of repairs that are necessary?

Mr. Dill: I would not want to speculate now until they get that report done.

Ms. Yukimura: Okay. So you said it is basically the roof and the door, right, that you are going to be looking at?

Mr. Dill: And the floor. The impacts of the floor are likely from the roof and the door. As you probably noted in the gym, the damage to the floor is along further than the door itself. So some of the repair work probably proposed will extend further than the door itself along the floor. But again, we really need to get that study done from the consultant to be able to establish the scope of work and the estimated costs.

Ms. Yukimura: Okay. I mean, I think we all share the Chair's concern that this has been such a long journey without any results for the community. Thank you.

Council Chair Furfaro: Mr. Rapozo?

Mr. Rapozo: You are confident that the consultant's report will be back within nine months? Optimistically six months, but looking at six to nine months to get a report back from the consultant?

Mr. Dill: Correct.

Mr. Rapozo: And until that happens, then we are not going to do anything with the gym until we get that report back?

Mr. Dill: Well, we will continue to monitor.

Mr. Rapozo: Besides monitoring, we have been monitoring. We know what happened.

Mr. Dill: My point is, if we find something that warrants, we will address it.

Mr. Rapozo: Has the consultant been obtained already?

Mr. Haigh: No, we need to follow through with the procurement process for the consultant?

Mr. Rapozo: You have not started it yet?

Mr. Haigh: We have not started it?

Mr. Rapozo: What is best estimate for a cost and where is that money coming from?

Mr. Haigh: Parks has funds to be utilized. From my understanding there are funding from Spouting Horn generated revenue that can be spent on any Park facility.

Mr. Rapozo: Spouting Horn moneys I believe were for Spouting Horn. It can be used for other projects?

Council Chair Furfaro: It can be used for other Capital Improvement Projects.

Mr. Haigh: My memory is \$120,000.00 is available there. We certainly do not expect this consultant contract to be that expensive.

Council Chair Furfaro: Before you go any further there, out of that \$120,000.00 that can be used for Parks projects throughout the County, you better check with Lenny, because they have earmarked a significant amount of that money already. Okay? It is going to the Kapa'a field. I am sorry to have interrupted you, Mr. Rapozo, but make sure you understand the financial status of that account. Thank you. Mr. Rapozo?

Mr. Rapozo: We are looking at about \$120,000.00 for this study?

Mr. Haigh: No, those are funds available. Consultants are usually more expensive than I expect, but to me this type of study could be in

the \$25,000.00 to \$50,000.00 range. We need to go through the procurement process and have the professionals come back to us with a proposal and move from there.

Mr. Rapozo: Okay. So six to nine months including the procurement process as well?

Mr. Haigh: That is why we say the six to nine months is optimistic, because you never know what can happen during the procurement process. We are going to do our best to move this along as quickly as possible.

Mr. Rapozo: When do you anticipate starting the procurement process?

Mr. Haigh: I'm hoping to start it today.

Mr. Rapozo: I know you are hoping today. I am hoping that started a long time ago.

Mr. Haigh: My understanding is that they are working on the R.F.Q. to send to Purchasing to have them published, so we can start the waiting period to obtain resumes and from there, do the selection, and then from there to contract. And along this way, working with Parks, and being fully committed to sharing my expertise along the way and the procurement process tends to drag out sometimes and I will be with them step-by-step to make sure we expedite it appropriately and as quickly as possible.

Mr. Rapozo: Thank you, that is all I have.

Council Chair Furfaro: Before I take public testimony, I want to make sure you have an understanding of what the Chair's expectations are. You are going to pursue this procurement and get together with Lenny to re-visit the Parks funds and how much money is available there. We will have a halfway checkpoint in four months and understand that you have secured a consultant, the scope of that work, et cetera. And then we hope for all intents and purposes to have a target in eight months. Okay? I want to tell you, I am going to walk, talk and breathe this item in your department, Larry. This is an asset for the County. This is not repair and maintenance. This is to salvage an asset that has more life to it. On that note I would like to tell the members after I take public testimony, I am going to move to receive the item and I am going to ask the staff to not have Lenny come back in two weeks to hear any more on this commentary. I am going to have both of you back in four months to give us an overview of this entire problem with the gym. You agree, we will visit with you in four months? Thank you very much. I am going to see if we have any other public testimony before we receive this item. And to the Clerk's office, you understand my point. There is no sense in having Lenny come next week if we are going to visit in four months. Let us take public testimony first. Anyone wants to speak?

Mr. Chang: Can we call Doug Haigh back for public testimony?

Council Chair Furfaro: I do not think so. They report to us and they have gotten their marching orders. We can have them come back then, but not simultaneously with the public.

Mr. Chang: I just wanted to say that I think it is important that we listen to what the public has to say.

Council Chair Furfaro: We do that, Dickie, and I do not think it is appropriate to have the administrations people in the chair at the same time we call public testimony. If you want me to call him back after public testimony, we will. Now we are taking public testimony.

Mr. Chang: I guess...

Council Chair Furfaro: This discussion is done. Now we are taking public testimony, Mr. Mickens.

GLENN MICKENS: Thank you, Jay, for the record Glenn Mickens. You have my written testimony.

Council Chair Furfaro: Excuse me, Glenn. If you disagree with my decision you may call for a vote amongst the members. It is public testimony that we take now, Dickie. We do not take discussion between the public and the Mayor's administration. If you disagree, you may call for a vote amongst your colleagues to override the Council Chair.

Mr. Chang: I am not disagreeing. I think it is important that we have Doug Haigh here with the Buildings Division and I just wanted him in the chambers, because a lot of times we have testimony.

Council Chair Furfaro: You have Mr. Dill here in the Chambers.

Mr. Chang: I understand.

Council Chair Furfaro: And I will call Mr. Dill back. Thank you very much. Mr. Mickens?

Mr. Mickens: I believe that the heart of this total Kīlauea leaking roof/door problem revolves around the issue that Councilmember Bynum highlighted at the Council floor about a month ago. We are hiring people for top positions that do not have the experience, qualifications, or expertise to be there. This is not a negative reflection on those taking the jobs, but on those that do the hiring. In my opinion our Administrations past and present have been responsible for hiring people in our Buildings Division who either did in-house designing of this Kīlauea Gym or hired an outside contractor to do it. And it appears that the roof and door leaks have been the major problems, but those that designated and built it were the ones responsible, in my opinion. The first roof was put on after Iniki and replaced in 2004, since they were both leaking. And now in 2012, we are again replacing the roof, and door, and spending \$120,000.00 to get a consultant to tell the contractor what to do. We hired a consultant in 2004, and when Councilmember Rapozo asked the Administration what the cost was, they did not know. The problem is not only that this has been an ongoing issue for eighteen years, but why do we need to hire consultants to tell a good contractor what to do? When I tell roofing contractor friends of mine what is going on, they laugh and cannot believe what they are hearing. This whole mess, legal fees, consultants, replacing a roof three times shows gross incompetence in our system and desperately needs changing, change like a County Manager, and if I heard correctly our Buildings

Division could not correct the problem and now they have passed it on to Parks and Recreation as it was pointed out here. Who made that call and why are we passing the buck? At the last Council Meeting on October seventh, I asked the question, if I heard correctly the consultant for the job that put the new roof on, we repaired the roof and it is still leaking. So do we now have some recourse to go after who the consultant or contractor was who put the roof on? Jay, your comment was, "I am sure that they are looking at it in this point of time." You also said, "That question has come on the radar screen, but it has been an expensive and difficult process." We all agree with you on that. So where is the answer? It was stated at the last meeting that Ken and I should "take this kind of collaborative knowledge you have and share it with the building department." It was also stated – I am sorry – we are now -- we are not contractors or consultants or being paid to tell anyone anything. This body controls the purse strings of all happenings in our government and has the eyes and ability to pursue any issue that the public brings before them as with this eighteen-year debacle. In fact, in the April twenty-sixth Council Meeting, Chair Furfaro said to Mr. Rapozo and Mr. Haigh "I do think it is realistic we should have a report back in maybe ninety days to understand where we are, especially with the Ko'olau side of the building and details on what to expect from the consultant." Where is the accountability in this Administration for getting things done? Where is the leadership on the Council to see that instructions are followed? I certainly appreciate your message to them, Jay. Mandating that they come back, but we are talking about what? Six to nine months now? We have been waiting eighteen years. Where is the coordination in this Administration to find out what is going on? A problem like, this \$1.5 million facility as you said, it is impossible that this thing can drag on for that length of time and we sit here and allow them ninety days to come back with no response and they want another six or nine months to do it again. Something is radically wrong. I just do not understand it. As you pointed out, Jay, you are from Kilauea and the public is extremely frustrated. I get contractors calling me, roofing contractors telling me this cannot be that huge a problem. Someone is doing something wrong, but who is hiring these people? Why consultants again? Anyway, it is extremely frustrating, Jay. I think as you said it and Mel has said, I do not know what the answer happens to be, but somebody has got to be held responsible. Thank you, Jay.

Council Chair Furfaro:
this morning? Mr. Taylor?

Anyone else who wants to give testimony

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. I, too, am frustrated with this in the short period of time I have been here on the island. But Monday there was a meeting, the Mayor had a meeting in Kilauea, which I attended, and after the meeting, I spoke to the Mayor about the roof. And I reminded him when he was in charge of the Parks and Recreation district that the roof was leaking and it should be fixed before the rainy season this coming year. In the process of talking with him, a gentleman came up, and I do not know his name, but he is very active in the community down there. He is very familiar with problems with the gym. I believe he is involved with either school administration or a teacher down there, and he is involved in running a basketball activity there in the gym. Anyway, he asked me afterwards if I knew the history of the gym, which I told him just a little bit. He explained some more things to me, but he said he had had somebody come down there with a moisture meter, and they checked the whole floor and the only place where there is a serious moisture problem in all of the floor is where the water comes in from the doors. He claimed that with some weather stripping, and some are going in and drying out the flooring and resurfacing it or whatever, the problem could be repaired. His estimate was

around \$5,000.00. Now I am really concerned, because we're talking up to \$120,000.00 for a consultant –

Council Chair Furfaro: We are not talking about, Ken, the amount in the account is \$120,000.00. The statement we got was \$25,000.00 to \$50,000.00.

Mr. Taylor: Okay. On top of that, I heard figures of \$240,000.00 to put the last roof on. And so we are talking somewhere around \$300,000.00 plus whatever it takes to fix the doors and so on. But if this problem is only related to the activities from the doors, then it seems to me that a prudent thing to do would be to go in and fix the doors, see if that indeed is where the real problem is, and if it is, problem solved. And we have saved a lot of money. This gentleman could be tracked down and could be helped further with other information that I know of, but I would say that that would be a place to start, because if this gentleman had, whoever it was, come down there with this moisture meter and only found the moisture problem immediately inside the door area, where there is buckling and whatever is supposedly taking place. If that solves the problem, then we have saved the County a lot of money and it seems prudent that at this point in time we go that route. Fix the doors, make sure if that solves the problem. It doesn't make any sense to go out and if you are going to fix the roof, we have a lot of good roofers on this island, all we need to do is the same thing we did with the bike path, where we spent millions and millions of dollars with a design-build contract and instead of spending \$50,000.00 on a consultant or up to \$50,000.00 on a consultant, put that \$50,000.00 into paying a roofer to put the roof on and guarantee his work for ten years. Yes, it costs a little more than a normal one-year labor contract, but if you go to a ten-year activity, it costs a few extra dollars, but then you have somebody reliable if there is a problem after the new roof is installed, if that is what is really needed. It seems to me that from what I have heard that we need to look at the door situation first, before we go spend a lot of money on consultants and roofing. Thank you.

Council Chair Furfaro: Ken, where we presented this, the gentleman's name, is it Bill Troutman? That is who you are talking about at Kilauea. He gave me a report, which I forwarded to Parks, when brought the attention to doing the doors. Where we are at right now is this new evaluation that they want to do. Believe me, I will be writing to Mr. Dill and to the Mayor again referencing Bill Troutman's report. Thank you for your testimony. Anyone else who wishes to speak? Would somebody get Mr. Chang, as I will bring Mr. Dill back. Mr. Dill, could you come back, please? Mr. Dill, could you introduce yourself again, please.

Mr. Dill: Larry Dill, County Engineer.

Council Chair Furfaro: I appreciate you being the head of the department, and you stayed to take the public testimony. I'm not about to begin a dialogue with department heads and testifiers in front of the Council. That is not the way we do business, but there is clearly some concerns about addressing the door first as you have heard from the public. You have heard my statement, I will be writing the mayor and yourself, referencing perhaps a meeting with Mr. Troutman again based on the last report I turned in about the reading of the moisture that was in the floor. There was a percentage of something like twenty-eight percent moisture in the floor from that report he shared with us. Mr. Chang, do you have any questions for Mr. Dill?

Mr. Chang:

No.

Council Chair Furfaro: Mr. Dill, take the public testimony you heard and please continue and make it part of your discussion. We will see you in four months. Four months is exactly December 19. Thank you very much. Members, I call the meeting back to order. Mr. Bynum?

There being no objections, the meeting was called back to order and proceeded as follows:

Mr. Bynum: The Kilauea Gym has been on our agenda for a long time. So I just want to say a couple of things. One, first about the Parks Department. The Parks Department was created by Charter, by a vote of the voters several years ago. If you looked at the public record here, you would see testimony from Parks about a two to three-year phase-in of their department as a stand alone department and phase two of that never came to fruition. That is decision made by the Administration of how they structure their departments and who does what. So I just want to point out that we did get a kind of planning and project division in the Parks Department at that time. But we never transferred the maintenance as was initially indicated as part of the transition plan. Sometimes everybody working with the best of intentions, things happen. The Kilauea Gym issue starting with the roof were looked at extensively, including the first-ever performance audit done by an independent person on the Kilauea gym, and when those audit findings were completed, they were not released to the Department of Public Works for more than two years, and not released to Council members. But if you look at that audit, it is like...and we have had, gosh, how many meetings about what went wrong with the roof? And there were a million different theories about what the problem was. But you know, in my read of all of that, there was no culprit, there was no person who messed up terribly. It just is sometimes things go wrong and sometimes it is hard to pinpoint it and that is the way it has come down. I like the answer that I got today that there are three issues. There is the roof still as an issue. There is the floor in two places, and that damage from the door has happened over an eighteen-year period. And then there is the damage by the door. What I heard today is that they want to make sure that they do that systematically and not repair the floor when the roof issues are not resolved and taken care of. So they are looking at this together, but there are many instances where Public Works and Parks collaborate and they have to, because that division never was completely done. And I am not being critical of that, because it may be for the sakes of efficiencies it did not make sense to create two stand-alone pieces of that in what is basically a small town. So I appreciate the Chair staying on this and I appreciate that they are being systematic about the solutions, and in the meantime, the facility is being used and has been used all along. Thank you.

Council Chair Furfaro:

Thank you, Mr. Rapozo?

Mr. Rapozo: Thank you, Mr. Chair. I guess I disagree a little bit. I was not happy with the answers that we got today because it is the same answers that we get all the time. That structure both physically and bureaucratically is broken. The fact that the division between Parks and Public Works was made years ago by Charter, it was not a Charter Amendment that was proposed by the people, it was Administration-driven. The Mayor at that time wanted to create a new department and it went to the Charter Review Commission and became a division. I do not agree it should have been separated at the time, but the people decided because they felt they were going to get a much better run

County if Parks had their own department, and that has not proven to be true. A lot of it is just because of what Mr. Bynum said we have not completed the process that was promised to the people. So it is broken. The system is broken and we saw that clearly today. This whole issue between Public Works and Parks and what I call the "duplication of services" has to be repaired and fixed immediately. The issue has never been funding. This Council, this one and prior Councils, have funded every single request that has come here for that gym, whether it was repair or maintainance or consultants. The Council has always been there to provide the funding. And yet the people still do not have a gym that works properly. It is not a funding issue. This is simply not a priority of the Administration. That is the bottom line, because if it was, it would have been fixed by now. And it is frustrating to be here time and time again, and I just feel sorry for the Kilauea residents. We all go out to Kilauea and hear it. It is one of the top issues in this County is their gym, and we still cannot give them a definite answer as to when it is going to be repaired. Because the gym is being used now does not mean it is acceptable. I mean it leaks. There has been a lot of issues with the floor at the door, but there is also issue as Mr. Furfaro talked about tripping on water because the roof was leaking. So it is a bigger issue than just the door and we need to address it. And then the other thing, Mr. Chair, I know at one point, I cannot remember if it is in the budget, I asked staff to check, but where we requested a reconciliation of the Spouting Horn fund. Maybe you have seen it. I have not gotten a response, but I remember a big chunk of those funds would be used for Kapa'a. So I do not think we have the funds available at \$120,000.00 amount that was stated. So I asked our staff to ask if we even received that and if not, I want to see the reconciliation of that fund because I do not believe that. Those moneys are committed to other projects. The message is loud and clear from the Chair and Council that we need to make this a priority. It has gone on too long and the cost of waiting continues to rise. Let us fix it once and for all and I am hoping that the messages are getting across. Thank you.

Council Chair Furfaro:

Other members? Mr. Chang?

Mr. Chang: Thank you, Chairman. I think the discussion that we had today was everything that we have heard in the past. We have all been in the Kilauea Gym. I do have a little bit of concerns as far as safety is concerned. I guess whether you want to talk about the roof, you want to talk about the floor, you want to talk about the door, obviously there is going to be a lot of moisture in there and now that we are waiting another six to nine months, if you think about, September, October, November, December, January, February, March and April, those are the wettest months that we have and any time you watch sports, whether it is with youth, high school, N.B.A., if you will, volleyball. Any time anybody trips, perspires, they fall and you have people wiping the area down because you cannot see that water. It is the same with the black area on the floor, because when it starts to bubble, we do not know what is coming up under the gym. The moisture, the sweat, the humidity, whatever it is. And we are going to expect rainstorms, I would imagine, during these months. These are eight critical months that we are looking at this gym, especially being on the north shore. So I just want to be advised that yes, we do have players running around and maybe one person fell and slipped, but that is the first of what could potentially be the first of many. Last week we were here, Ernie Barreira was talking about the update of the procurement and I want to make sure that people out there, the local contractors and workers, know there are opportunities to be bidding on those projects so hopefully we can get better bids and get this done as quickly as possible. On a personal note, I hope to clarify myself because during the budget and various

testimonies we have had, every time we have had public testimony as soon as the Administration is here, giving us their testimony, or the question and answer, yes we do control the purse strings, but I think it is important for department heads or division heads to stay in when the audience is giving their mana'o and time. The reason I wanted Mr. Haigh in here was that this testimony discusses Mr. Haigh and discusses and uses his name. I do not know if he is going to hear what the testifiers say, but it is important in the past practices that we have had in the past, I believe that the department heads and division heads should give the public respect and listen to their testimony, because the issue is not over until we move to the next agenda item. That is what I wanted to say, thank you.

Council Chair Furfaro: Mr. Chang, I want to remind you it had nothing to do with the administrative people giving respect for the public. Mr. Dill is here present, he is Mr. Haigh's supervisor, and he was going to stay present, and end of comment, and stressing it out as not giving respect was never the intent. Vice-Chair Yukimura.

Mr. Yukimura: Thank you, Chair. This issue with the Kīlauea Gym has been totally frustrating. And it is very unfortunate, because I think people with even roof leaks on their residence know that when there is a roof leak it is such a hard problem to diagnose what the problem is, and in the case of the gym, it is a much bigger structure, much more complex. I agree it has not been a priority, but I also want to acknowledge the difficulty of the problem. I appreciate Mr. Taylor's suggestion that if there is a simpler solution on the door, and I am sure Public Works will follow through, that should be done as soon as possible. I have not been tracking Mr. Troutman's suggestions, but the Chair is already taking care of that. It is so frustrating but I think we have to now get through the process, set it as a top priority as I believe the Chair with the support of the Council is doing and hopefully come to a successful conclusion. I just want to say that I think the separation of the Parks division into a separate Parks Department was a good idea and a very important move. If you look at Public Works, I do not know how many divisions that they have, but engineering, sewers, roads, what else, Larry? Buildings, Solid Waste. Parks was a hand maiden, a low priority in that kind of structure. There was no way that the administration of the Public Works Department could give Parks its due. It was the right move to separate Parks from Public Works. How you separate it and what overlapping activities you put where and how you do maintenance and janitorial and all those things where there is an overlap of buildings has very many different options and I do not think we have found the optimum way yet, but we are a small County and it does not seem smart to recreate everything in the Parks Department and rather have interdepartmental sharing would be the way we have to find. But we are still making our way there. I think the basic separation was important, and I think because of it, we are able to handle our Parks' problems better.

Council Chair Furfaro: Okay. Anyone else wishing to speak? Mr. Dill, again, thank you very much for remaining here. Mr. Dill, December 19 will be upon us and I want to make sure there are a couple of pieces that I hope you understand. We have done a poor job defining the difference between "repair and maintenance" and "asset management." Asset management comes under the County Engineer in every way, shape, and form described in the Charter and I will be sending a letter to County Attorney to reference the standard accounting practices that gives definition to "repair and maintenance" versus "asset management," which is the gym. That is an asset for this County. This is not simply changing a light fixture or having the floors waxed. You need to have a

serious discussion with that department. So let us get the scope defined so we do not have to have this discussion again. I would ask you to revisit the correspondence, I sent over to you with comments months ago from Mr. Bill Troutman. I do believe if there are simple fixes, we should be on it now. You have a leak in a sliding glass door in a hotel room, you do not want to fix the door until you replace the carpet. You fix the door so there is no further damage and I want to make sure you understand my point on this. I do not think the doors have to wait, the Ko'olau doors do not have to wait for an oversight of all of the pieces. You still have to fix the door, which is causing the biggest problem with the floor. Not to say that there are not other things, but I would expect to have a little clarity for that very soon. And I will be sending you some correspondence. Again, thanks very much for staying here and I am looking for a motion to receive.

Mr. Chang: Chairman, there is a person for public testimony.

Council Chair Furfaro: There was public testimony and he was not available. So I am looking for a motion to receive this. For you in the back, Lonnie, it will come back on the calendar on December nineteenth, with a halfway visit to the progress we have made in selecting consultants for this repair.

Ms. Nakamura moved to receive C 2012-222 for the record, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Okay, Mr. Dill, again, thank you for being here. Okay let us go back to the normal chronology of the agenda.

C 2012-345 Communication (07/31/2012) from the Director of Parks and Recreation, requesting Council agenda time to brief the Council on the Multi-Use Path Quarterly Report for the period December 2011 to June 2012.

Mr. Rapozo moved to receive C 2012-345 for the record, seconded by Mr. Bynum, and unanimously carried.

Council Chair Furfaro: We are not having someone available to us in Parks unless Mr. Costa is planning to come over, but I did receive from the Parks Director his need to be absent from today's meeting for a family need in Honolulu.

Ms. Yukimura: Mr. Chair, do you want to receive or defer?

Council Chair Furfaro: I think it would be best if we defer for two weeks so we can have a discussion on the update.

Ms. Yukimura: You want it on the Council floor rather than Committee?

Council Chair Furfaro: Yes, I would like it on the Council floor. This is an update.

Ms. Yukimura: I move to defer.

Council Chair Furfaro: I did not hear you. I did not understand what you said, Dickie.

Mr. Chang: Before we do the deferral, let us see if there is anyone who wants to give testimony on this?

Council Chair Furfaro: Come right up, Glenn.

There being no objections, the rules were suspended.

Mr. Mickens: For the record Glenn Mickens. Thank you, Jay. You know this is a pet project of mine. Has been for a long, long time. You have a copy of my testimony. As you know I have been a consistently strong opponent of this multi-use path, not a multi-use path or bike path in general, but this one in particular. Two bike paths are great, I do not support them. This is not and will not be a true bike path. Every time a biking event is put on here, you see the bikers using the route that Joe Rosa helped build many, many years ago along our highway. We are continually deceived by the numbers that we get for construction of this path of those pushing it have said the total twenty-three point six miles will cost \$53 million, whereas by their own numbers the six point eight miles of completed path has taken ten years to complete has cost \$30.2 million or \$4.44 million per mile. Thus the \$4.44 million times twenty-three point six is \$105 million and not the \$53 million given to this Council and taxpayers. To further back up the true cost of this proposed project, the D.O.T., the Department of Transportation, has passed out a spreadsheet with a breakdown cost of each uncompleted phase of this path and this number pretty well confirmed the figure of the \$4.44 million that is the cost of the completed section and no land acquisition, condemnation, maintenance, landscaping, or security patrolling cost has been factored into that equation which could raise the cost even higher, and remember too that at the December 15, 2010 Council Meeting Communication 2011-19 was approved by a majority of this Council. A purchase agreement to acquire property for the path along the Papalua Road. Again, erroneous numbers were given for this project; they were said to be minimal. But when Councilmember Rapozo widely questioned this minimal cost, he found out from a realistic contractor that the actual cost would approximately be \$439,762.00 which included the land acquisition, a long ways from being minimal. The point is that this path is being pushed without any oversight to see why it is costing so much money. This is not a high priority project on a list of issues that need addressing on Kaua'i. So why and who is pushing it? It will never benefit the mass of the people of Kaua'i whose tax money is paying for it. And the key word here is "mass people." To put these costs in a greater perspective, one mile of repaving our County roads averaged twenty feet in width is costing about \$250,000.00. Whereas this path ten feet wide is costing \$4.44 million per mile or about seventeen to eighteen times more, granted that is path is newly constructed and not being re-done, but regardless of that fact, any rational person would have to question the huge cost difference in the roads and path. Then we also -- JoAnn, I am not bothering you, am I?

Council Chair Furfaro: Hold on just a second. Courtesies to the Councilmembers should be directed at the Chair. That is your three minutes. If you have a question, you direct it to the Chair.

Mr. Mickens: Thank you. Then we also find out from some research done by John Hoff that the one hundred thirty eight acres of land given to the County by Kaua'i Lagoons in 2010 in exchange for millions or possibly billions for their rezoning is restricted property. The only easement on that property is for servicing utilities, which probably negates a bike path from being built. A use this Council said could be used to make up a \$407 million shortfall in the path budget

for that in-kind match. We could go on and on, multitude of problems facing the path. Fuji Beach and the Moana Road project, Section 160 needed addressing at every phase. The path from Lydgate to Līhu'e boat ramp with Wailua beach problem. The route keeps changing at every turn and the cost never disclosed. In closing, is not anyone on this Council looking at the practical part of building this path and looking at the multitude of roadblocks present and the outrageous price it is costing? Many projects look good and feel good, but are they top priority and can we afford them? That is the question that should be at the top of the list before it is started. Thank you Jay.

Council Chair Furfaro: Glenn, I am going to ask you in the future, I have been very flexible, but the agenda item deals with the bike path and specifically activities for the period of December 11 through June 2012. We should be focused on that agenda item. I have no problem with your testimony, I am just saying that you have more flexibility given to you for public testimony by way of the Chair. I need to be able to restrict the Councilmembers on the scope of agenda. It is December through June. Councilmember Yukimura, do you have a question for Glenn?

Ms. Yukimura: Why are you talking about the easement at Kaua'i Lagoons when it is actually the County owns it in fee? So it does not matter if the easement is limited to electrical.

Mr. Mickens: Well if you cannot put a bike path, was that not the statement here, that you were using that as an in-kind match for the bike path?

Ms. Yukimura: This is totally –

Mr. Mickens: The \$408 million?

Ms. Yukimura: This is totally inaccurate, because the County owns the property and can use that property for whatever use that it needs to. And it was not given in exchange for rezoning. We did not add any units that were above what was already existing and, in fact we decreased the number of zoning units. So please, I do not feel it is appropriate to have this inaccurate thing go unanswered.

Mr. Mickens: Maybe I can get John Hoff to contact you, JoAnn, because he has done hours and days and weeks of research on this thing and he is certain of what he said. He has facts to back this up.

Ms. Yukimura: Even if you assume what he said here is true, it does not mean that the County cannot build a bike path right there.

Mr. Mickens: But if it is a restricted zone, how do you build a bike path through it?

Council Chair Furfaro: Glenn, let me share this with you, Vice-Chair is correct, the zoning density was reduced from nine hundred units to seven hundred fifty and that the restrictions in the deed are very limited and they do not include any of the items that you are referencing, and to make sure that we go forward with the right intent in answering your questions and the statements that

you make, we want to make sure they are correct. Give me a week and I will go through the deed with you.

Mr. Mickens: Can I bring John to you, Jay?

Council Chair Furfaro: No, I will go through it with you.

Mr. Mickens: These are facts that John brought to me.

Council Chair Furfaro: If you do not accept my offer, I will withdraw it?

Mr. Mickens: I would be happy to.

Council Chair Furfaro: I will call you and we will go over the deed highlights. Vice-Chair Yukimura, are you fine with that?

Ms. Yukimura: Yes, thank you.

Council Chair Furfaro: Next speaker, please.

JOE ROSA: Good morning members of the Council. For the record Joe Rosa. Like you mentioned, Jay, it is for comments on the existing bike path from December to June.

Council Chair Furfaro: December 2011 to June. The reason I said that is if you go back and revisit from the past, it is difficult for me to allow Councilmembers to address those questions because they are restricted to the posting scope and the posting scope is December 2011 to June 30, 2012. That is what is on the agenda.

Mr. Rosa: I understand that part. That is why I brought that up. Basically one thing that seems that that path is working very well, but I have guys complaining to me. There are loose dogs running around there. There is dog poop along the way. Where is the security? Where is the enforcement? So they trying to continue things, which is not working sufficiently yet. I am not just saying it. A guy approached me and he called me also afterwards again. So he said he was out there and there was a pit bull running loose and it went for his leg as he pedaled his bicycle. Where is the enforcement? As I say, everything on Kaua'i is a fad. When the broom is new, it sweeps good. When it gets old, everybody forgets about the enforcement and everything else and security. Even my good friend JoAnn, when she came back in 1976 she was for the bike path and she was riding her bicycle to come to work and the County made a special bike rack. She does not ride her bike today. I don't even see her riding her bike. Those are the kind of things that it is just a fad, wasting people's money. I put in a pathway from Keaka Road along Mānoa Road in Waipouli there, four feet wide and what happened? Nobody used it. They even had to break down the old railroad bridge so that the fishing boats could get out of that landing there. So you know, it is something – it is just a fad. And like Doug Haigh said from the start said, "It is going to get the cyclists from Kapa'a town." I do not know where he is seeing all these cyclists in Kapa'a town. I do not see it, like I saw in Japan or Taipei. So somebody is pulling someone's legs around here and I think Doug Haigh is one that I don't think is doing his job. He should be a building man and not trying to do engineering work with the bike path. He is getting a fat paycheck,

but why does he need consultants? Does he not have a staff that works for him to do the research work? Maybe it is time to shake that department up there. Maybe it is an extra load of somebody doing nothing. And I think, like what Dickie said, they should be here until everything is through with the agenda, instead of running away. So that is the way I look at it. He is a public servant and he gets paid from the public and he should be here and not going back into his office and watching the monitor. Thank you.

Council Chair Furfaro: Joe, hold on a second. Vice-Chair Yukimura has a question.

Ms. Yukimura: Mr. Rosa, Actually I used to ride my bike from Hanama'ulu to here.

Mr. Rosa: Right. I know that.

Ms. Yukimura: But anyway, so if I get back on my bike and start riding, then you will withhold any objections?

Mr. Rosa: No, because JoAnn, look, because through you the State initiated the bike path and I put in the first ones from K.C.C. to halfway bridge and thereafter went all the way to Mānā housing. So I know what I am talking about and there is one from Keaka Road to Waikaea canal bridge there. It was not even properly used. That is why when the bike path stuff came up I told Glenn. The bikeway was not used and sand drifted over and grass grew over.

Ms. Yukimura: Now it is part of the Ke Ala Hele Makalae.

Mr. Rosa: No, it is not even part of it. They used it when you pass the canal to the Kapa'a pavilion, they went around towards makai. That is not the old railroad path. I worked and I know.

Council Chair Furfaro: Okay Joe. Do you have any more questions?

Ms. Yukimura: One last sentence. When I was riding a bike, I was one out of five bikers on the road. Now there are at least fifty bikers or more?

Mr. Rosa: Where are they, JoAnn? You said it is a thing of the future.

Ms. Yukimura: Anyway thank you, Mr. Rosa.

Mr. Rosa: Even Mr. Bynum, he is a nice guy. He gives his bike a ride every morning coming to the Council with his pick-up truck.

Council Chair Furfaro: Joe, let me share with you, to some degree, your comments are well-taken and let's avoid comments about personalities about people's habits.

Mr. Rosa: Well, you know—

Council Chair Furfaro: Joe, I am telling you, not asking you. Okay? If you still have a question with it, read Rule 13-C, it deals with that. Now I took

your comments about the path maintenance and the loose dogs. I will be putting it in my report to the Mayor, just so you know that.

Mr. Rosa:

Thank you.

Council Chair Furfaro: So you also know that I give a report to the Administration on Thursdays every week after the meetings. I recap some of the items and I will put the maintenance and loose animals questions in there, but I also want to make sure, one day a week, we cannot have the department heads sitting here waiting for the agenda item and they do read it -- they do see it through the monitors that go directly into their offices. So I will point the maintenance and the dog issue out in my letter. I just wanted to tell you that. Okay?

Mr. Rosa: Thank you. That is the way it should be. And it should be totally enforced like I said. It would take twenty-four/seven, but it is not working the way they promised.

Council Chair Furfaro: Every Thursday I do a recap to the Administration and the County Attorney, and I will put your comments in there.

Mr. Rosa:

Thank you, Jay.

Council Chair Furfaro: Any more public statements on this item. Lonnie, come right up.

LONNIE SYKOS: For the record Lonnie Sykos. Good morning Chair and Council Members. As a taxpayer I have a question, and this goes to the intent of the use of the bike path -- of the multi-use path. And does the County have a system to discern how much of the usage is recreational and how much of it is for commuting purposes?

Council Chair Furfaro: I do not think it is refined that well, Lonnie. I do not, but certainly it is a good idea.

Mr. Sykos: So I have heard various positions as to whether or not there is a requirement that the path meet some minimal requirement having to do with it being used for commuting. Is that part of the federal grants or is that part of urban myth that surrounds this?

Council Chair Furfaro: Quite honestly, we have a summary of the grant funds that are used. It is public record. It is available to you and so forth. And I cannot tell you, but I will look into it in my question is there any condition in those grants to keep that inventory as it relates to usage?

Mr. Sykos:

Correct.

Council Chair Furfaro: And I would like to say to you that I will get back to you after I have checked with that. But all of that is public record.

Mr. Sykos: It is too confusing for me to understand with my lack of education and the arcane field of government.

Council Chair Furfaro: I think you articulated your concerns very well and all I can say all of that is public record, but I will look into this with a question.

Mr. Sykos: And I simply would like also, is there within the planning process of this, which I suppose is inside the Administration, not inside of the Council, inside the planning process is there a rationale why it is that the bike path-- the multiuse path has become so expensive? I do not believe it was forecasted \$4 million per mile.

Council Chair Furfaro: Lonnie, I will get you the exact details. Could you make sure that I have an address to get to you the information. It is completely reconciled.

Mr. Sykos: I am not making any accusation, it is simply the various sides in this, their material facts are so opposed it is difficult to figure out my ducks from my geese here.

Council Chair Furfaro: I will be glad to get that information, but maybe Mr. Bynum can help you a little bit along that line. Mr. Bynum?

Mr. Bynum: Hi Lonnie.

Mr. Sykos: Good morning, Tim.

Mr. Bynum: I appreciate your testimony and you used a term that struck me, "urban myth," because if you say the same thing over and over again, it turns into folklore is the way I put it, but urban myth also and the issue whether or not there is a requirement for transportation, that has been addressed many times. You know, the Administration a couple of years ago created a task force, collaborative Parks, Building, Finance, County Attorneys, and since then they have been delivering periodic reports. Every time they deliver a report they do a complete financial analysis, expenditures to-date, and that is available in a spreadsheet and I am sure an updated one will be here in two weeks. In rough numbers we have spent -- I forgot the exact numbers, but \$32 million, right? There is less than -- there is like \$520,000.00 that have leveraged \$32 million and have put lots of people to work and these are funds that come from transportation enhancements and set aside for those types of projects. In terms of cost per mile, we knew it would be costly. There are several big bridges. So a mile that includes four or five bridges is going to cost more than a mile that is a six inch slab on grade. So to do a math calculation that says we have done x amount so far and extrapolate that out to the end. In the long run, I hope this path goes all the way from Niumalu to Anahola and all of that is in progress. Some of the moneys spent is on environmental assessments, and planning crossing the I's and dotting the t's, and we front loaded that planning process so as funds become available in the State/Federal/County system, when something falls down on Māui, and all of a sudden the State reallocates \$10 million, Kaua'i has a strategy to say we are ready to go. We have got our ducks lined up, because we want to put people to work and I think there is widespread support for this path that deserves access along the shoreline for everybody. And so I appreciate your testimony. I hope I answered some of your questions, but in two weeks the task force will be here with their periodic update which has worked out really quite well. Another one of the urban myths to me is there is this laundry list of questions that never got answered. There are file cabinets full of written responses over the ten, fifteen years. So I would

encourage you to come in a couple of weeks. To me, there is no secret that I'm a big supporter of this project. It is no secret that we have reached out to each and every community and talked to fishermen and make sure it doesn't restrict access, but increases access. So I could go on and on –

Council Chair Furfaro: But I will not let you.

Mr. Bynum: And I will not. But I think I have answered a couple of your questions and in two weeks we will get the complete update and ever since that task force was formed the public has been fully informed. Thank you.

Mr. Sykos: Thank you.

Council Chair Furfaro: Lonnie, if you would like, I will loan you my copy of the reconciliation from the last piece as long as can you return it to me. I will be glad to give it to you, but if you go to Parks, it is a public document. Thank you very much. Anyone else who wishes to speak on this item? If not, I am going to call the meeting back to order. We had a motion from Council member Rapozo and we had a second from Mr. Chang which was to receive, but I would like the gentlemen to pull that back, so that I can have a motion made on the deferral.

Ms. Yukimura: Chair, I think a motion to defer has precedence.

Council Chair Furfaro: It is just extending some courtesies and explanations. The motion to defer has precedence, but gentlemen, would you withdraw? The motion to receive, by Mr. Rapozo according to my notes, followed by a seconded by Mr. Chang.

Mr. Rapozo: I withdraw my motion.

Mr. Chang: I withdraw my second.

Council Chair Furfaro: Now I am looking for a motion to defer for two weeks.

Ms. Yukimura: I just want to say one thing, if I may, first?

Council Chair Furfaro: Okay.

Ms. Yukimura: I want to say that the concern about \$4 million a mile, if that is even accurate, needs to be compared to the \$30 million for less than a mile that was spent to widen the road at Wailua Bridge. And now I am ready to make a motion to defer.

Council Chair Furfaro: Thank you.

Ms. Yukimura moved to defer C 2012-345, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Thank you very much. Next item.

C-2012-346, Communication from the Director of Personnel Services, transmitting for Council information pursuant to Section 19 of Ordinance No. b 2011-732 Fiscal Year 2011-2012 Operating Budget Quarterly Report as of June 30, 2012 relating to vacancies, new hires, transfers, reallocations or promotions approved within the County.

Mr. Chang moved to receive C 2012-346 for the record, seconded by Mr. Rapozo.

Council Chair Furfaro: Thank you. Anyone in the audience wishing to testify on this agenda item, which is our quarterly report? Seeing none, I will call the meeting back to order. Members I do not have my copy directly available to me, because I am making a presentation to the Police Commission on Friday so my notes are downstairs. Any discussion on this report? Vice-Chair Yukimura?

Ms. Yukimura: I want to say that yesterday I had a chance to meet one of the new-hires, which is Keith Suga, who is the new C.I.P. coordinator, who comes from Goodfellow Brothers and seems to be highly qualified and I know he will be introducing himself to us formally and we will have a chance to interact with him on an issue that is very, very important to all of us, our C.I.P. projects, which is about jobs and facilities for our people. But it is just that he is one of the statistics I believe on this. It was good news. Thank you.

Council Chair Furfaro: Yes, I would concur, and we also have Codie with us, who I introduced earlier. Further discussion, members? I do want you to know that I will be making a presentation to the Police Commission and part of that with the number of vacancies in the Police Department, I will be asking them to come up with a recruitment plan that may include advertising and solicitation for positions. This is very similar to the plan that I presented in 2006 when I was Finance Chairman, so I will be doing that. And have I no more discussion on this item. We have a motion to receive, all those in favor, signify by saying aye?

The motion to receive C 2012-346 for the record was then put, and unanimously carried.

Council Chair Furfaro: Thank you very much. Next item please.

C 2012-347 Communication (07/19/2012) from the Director of Finance, transmitting for Council information the Period 12 Financial Reports Statement of Revenues as of June 30, 2012 for Fiscal Year 2012, Pursuant to Section 21 of Ordinance B-2011-732.

Mr. Chang moved to receive C 2012-347 for the record, seconded by Mr. Rapozo.

Council Chair Furfaro: You have the floor.

Mr. Rapozo: I did not have an opportunity to review the attachments and statements and if there are no objections, I would ask to refer to the Finance Committee or defer it to the next Council meeting so I have a chance to review those statements. It is the year-ending statements that ended on June 30, and I am quite interested -- more importantly the encumbrances that were made. I

will ask to defer it and leave it up to your suggestion, but if you want to defer it to the Finance Committee or defer it to the next Council meeting?

Council Chair Furfaro: I will be more comfortable deferring it to the next Council meeting because as you remember in our County, and I think I shared a County opinion on this with all of you, we actually have period 13 which gives them time to reconcile outstanding amounts and so forth. So I could ask to support your deferral.

Mr. Rapozo: Okay.

Council Chair Furfaro: Mr. Bynum?

Mr. Bynum: No objections to a deferral. I was just going to point out even though this is the year-end, there is a thirteenth coming up that is really the end, because they are still clearing up some expenditures and encumbrances. But it is an important thing, because it tells us how we did with revenue versus what we projected and what we actually received. I expect that what we actually receive will be substantially more than what we projected and that with expenditures, what we budgeted versus actual expenditures and I expect that we actually expended much less than we budgeted. So no objection to a deferral, but there will be a thirteen that will be in the final one. Thank you.

Council Chair Furfaro: So on that note, and as I have done in the past to honor some of the removals of motions, Mr. Chang if you would remove your motion to receive.

Mr. Chang withdrew his motion to receive C 2012-347 and Mr. Rapozo removed his second.

Mr. Rapozo moved to defer C 2012-347, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Thank you very much, next item, Madame Clerk.

C 2012-348 Communication (08/15/2012) from Councilmember Kualii, requesting Council approval to include the following proposals in the 2013 Hawai'i State Association of Counties Legislative Package:

1. A Bill For An Act Relating To Energy Resources

Mr. Rapozo moved to approve C 2012-348, seconded by Mr. Bynum.

Mr. Rapozo: Mr. Chair?

Council Chair Furfaro: You know, I think we have a motion to approve and a second, but I was thinking that perhaps we might want to take a recess before we go into testimony.

Mr. Rapozo: That was going to be my suggestion that we take our caption break so we do not have interruptions.

Council Chair Furfaro: We will do that now and I have the last report on the bike path that I will share with you, Lonnie, during the break.

Mr. Rapozo: One more thing Mr. Chair, also when we return I would ask for the consideration to take these items individually, one and two.

Council Chair Furfaro: Okay. We are going to take a ten minute caption break. Thank you very much.

There being no objection, the meeting recessed at 10:49 a.m.

The meeting reconvened at 11:05 a.m., and proceeded as follows:

Council Chair Furfaro: Aloha, we are back from our recess. I believe we had a reading of Communication C-2012-348. We will read the first part of Item 1 as it relates to an Act Relating to Energy Resources is the first portion we will take. Is there any more dialogue to read? So that the audience comprehends how we are going to phase into this? Thank you, and on that note, I will recognize Vice-Chair Yukimura to expand on that.

Ms. Yukimura: Yes, thank you. Just a query of the Clerk, it is to be in the County's Legislative Package – the H.S.A.C. Legislative Package and the County's Legislative Package, right?

Council Chair Furfaro: I think that was the correction made by the Deputy Clerk at the beginning of the meeting.

Ms. Fountain-Tanigawa: Yes.

Ms. Yukimura: I believe it was different from the Committee Report and the Committee item. Staff explained that the Legislative Package will come up...although approved in Committee, it will come up when our Legislative Package is being formed. So I guess that is the technical change.

Council Chair Furfaro: Would you like to respond, Mr. Rapozo?

Mr. Rapozo: I was under the impression at the Committee Meeting that we approved it for both.

Ms. Yukimura: Yes, we did.

Mr. Rapozo: So when the correction was made by the Deputy Clerk, I assumed, which we should never do, that it was at your request. But we will have the discussion on the County Package at a later date, so I do not see a big problem, but I realize what was approved at committee was for both packages.

Ms. Yukimura: Right.

Mr. Rapozo: I believe you were the requester, so however you want to handle it.

Ms. Yukimura: To me it was a technical shift, but I think with the Sunshine Law, I guess arguments can be made that because it is posted as such, we could discuss it, but instead, we will just defer it in terms of our legislative -- the County's Legislative Package, we will defer it to another time. Just take it up as an H.S.A.C. matter now then.

Council Chair Furfaro: Okay. Are we all in agreement with that?
Mr. Rapozo?

Mr. Rapozo: That is fine.

Council Chair Furfaro: Okay. You still have the floor.

Ms. Yukimura: I think if it is okay with you Mr. Chair, I would move to approve for the H.S.A.C. Legislative Package and then explain it? Is that all right?

Mr. Rapozo: There was already a motion to approve by Councilmember Chang. So we can go into discussion?

Ms. Yukimura: And it was only on this item? It was on both?

Council Chair Furfaro: Okay, excuse me, members. We are addressing item 1 first. So let us do this again, just give me a motion, Mr. Chang, addressing item 1.

Mr. Chang moved to approve C 2012-348 Item No. 1, seconded by Ms. Yukimura.

Council Chair Furfaro: Now the motion is made on item 1 by Mr. Chang and seconded by Vice-Chair Yukimura. Okay, the floor is open to you Vice-Chair.

Mr. Yukimura: This proposal would amend State law. It is an Energy Conservation and Consumer Protection Bill. And it would require -- there are four variances to the requirement that all new single-family residences be required to install solar water heating. And the first three variances under the law right now are based on the merits of whether there is enough sun or whether there is another technology that is based on renewable energies, but the fourth variance would allow solar water heaters to be not placed on residences if there is another gas appliance in the house and it would allow a variance for on-demand gas. We are proposing to amend the Bill to say that only the end-owner can make application for such a variance, because the end-owner is the one who has to pay the bill and in terms of lifecycle costing, it is much cheaper to heat water by solar water heater than on-demand gas, and furthermore, on-demand gas is not a renewable energy. This is a Bill that will move us towards sustainability and save our families a lot of money. It is -- the decision is made at the time of construction, which is the best time to install your energy system, and it is really the cheapest way to go, because you can include it in your mortgage. It is the easiest way to deal with upfront costs. And the end goal is to have most of residential solar -- or water heating to be done by a renewable non-fossil fuel. And Chair, one more thing is this was part of our package last year as well. We understood the value to both our

residents and to our goal of energy self-sufficiency. So this is just -- the bill did not pass in the Legislature and this is just preparing for the next Legislature.

Council Chair Furfaro:

Mr. Chang, you have the floor.

Mr. Chang: Thank you, Chairman. I have a question for Vice-Chair Yukimura. So I apologize, I was not at the Committee Meeting last week, but did we define -- is there a definition of who ultimately is the end owner?

Ms. Yukimura: The person who buys the house and lives in it or buys the house actually.

Mr. Chang: So if I buy a house, and I rent it long-term, how does that work? Can the renter put one up?

Ms. Yukimura: No. If you are buying the house, you are the one who decides whether or not to put a solar water heater on.

Mr. Chang:

So there is no choice?

Ms. Yukimura: There is choice. The choice of the owner and he is the one who will pay for the cost either himself or through his renters and right now rental units are at a premium if they are more energy-efficient, because utilities are often part of the cost to rent. So it is to the landlords' advantage to have a more energy sustainable rental unit.

Mr. Chang: But the end-owner will have a chance whether he wants to use solar or gas?

Ms. Yukimura: Well, if the end-owner, if the renter -- we are talking about the end-owner, that is the landlord.

Mr. Chang:

Correct.

Ms. Yukimura:

So yes, the end-owner will have the choice.

Council Chair Furfaro: Before I go any further, I want to circulate to all of you, hand-delivered to me were eighty-six signed petitions, I guess, for the purpose that people would like to find their own position on selecting water heating solutions for their home versus this bill. So this was hand-delivered to me. So I would circulate it amongst you folks and enter it for the record.

Ms. Yukimura:

Who brought it?

Council Chair Furfaro: It was delivered -- let me read the package here -- by Cheryl Leiafua. I have a number here and all of these are signed individually as part of an enclosed petition that requests the Council to reject this Amendment on the solar Bill proposed. And again, this was hand-delivered to me. So I will circulate it.

Ms. Yukimura:

Okay, thank you.

Council Chair Furfaro:

And please note it for the record.

Ms. Yukimura: We will ask The Gas Company if she is an employee.

Council Chair Furfaro: I will certainly query that.

Ms. Yukimura: Okay.

Council Chair Furfaro: Mr. Rapozo? May I just reach over you? You have the floor Councilmember Nakamura.

Ms. Nakamura: This is a question for Councilmember Yukimura.

Ms. Yukimura: Yes.

Ms. Nakamura: The Bill -- the Draft Bill that is before us states that applications for the following gas variance shall be accepted on the following basis only if the variance applicant is the party who will ultimately pay for the energy consumption cost and will be an occupant of the new house. It does not say you will be the end-owner, but says you will be the one who pays the energy consumption costs. So the way I read this, it could be the owner, if it is an owner-occupant or a renter if that person is paying the energy bill.

Ms. Yukimura: So it could be either one?

Ms. Nakamura: Yes. So your answer to Councilmember Chang's question to me is not clear. The way I read this --

Ms. Yukimura: This is at the time of construction, and so if the end-owner does not exist, if it is a spec house, then the default position is that the energy, the non-fossil fuel or the renewable energy system would be the one that is installed.

Ms. Nakamura: But if I have a vacant parcel, and I want to build a home and rent it out, because I want the income from that rental unit to help with my child's education, I will not be the one paying that bill. It is the renter who will be paying that energy bill.

Ms. Yukimura: Right.

Ms. Nakamura: So the way this law is written...

Ms. Yukimura: The proposed amendment...

Ms. Nakamura: The ultimate -- the person who pays the ultimate energy bill who is occupying that new house, which could be a renter, will be making that decision for me. That renter may or may not be there two or three months from now, but that renter will be the person determining whether or not I get this variance.

Ms. Yukimura: It may be we should amend the Bill to say "end-owner" because you are right. The renter will not be there. And if the renter or the -- I mean what we should say is "end-owner," basically and the end-owner is the one who makes the decision, but if there is no end-owner at the time of

building, then it would be someone else, then the default position would be the solar water heater. Thank you for catching that.

Council Chair Furfaro:

Mr. Bynum and Mr. Rapozo after that.

Mr. Bynum: Yes, we went through all of this last year, but the original bill to me was pretty clear. It says if you are building a new home, you need to put solar water heating in, but there is a variance for on-demand gas that is determined by the person who will ultimately pay the bill. So the way the bill was intended and this...what we heard testimony last year from the people administering this bill that that clearly was not the intent. And so the circumstance that Councilmember Nakamura is talking about build a home and the default would be solar water heating. You know, if you are building a home for yourself...

Council Chair Furfaro: Gentlemen, if you are going to have a conversation while the Councilmembers are speaking, I would ask you take it out, because I can hear the feedback from your conversation. Thank you. Mr. Bynum.

Mr. Bynum: Let me take a step back. The original intent of the bill was solar water heating. You put solar water heating on new construction, but if it is your home and you will be paying the bill, you can have this variance, but if you are building it for rental or spec purposes, solar water heating is required. That is the way the bill was written and that is the intent of the Legislature very clearly, and only when it started to be implemented that fifty percent of the homes built on Kaua'i were getting this variance even though on O'ahu it was a very small percentage. So the intent of the bill last year and the intent of the bill this year is to clarify for the regulators that yes, this variance still exists, but the person who ultimately pays the bill is the one who can request a variance. I think your read is correct, Councilmember Nakamura, that was the intent of the new bill and I believe this is properly written this way. I would not want and I do not think it would be appropriate to say to amend it, because it would be different than the original intent.

Ms. Yukimura:

Yes, thank you.

Mr. Bynum: So this is just to clarify -- this bill is to clarify and make sure that the regulators can follow the original intent of the bill that passed the legislature.

Council Chair Furfaro:

Mr. Rapozo?

Mr. Rapozo: Well, the way I read it, without the amendment it would provide for the owner to choose. Obviously the variance application would have to be done by the architect or mechanical engineer, but the choice would be left up to the owner and not the end-user. So I do not think it would be necessary to amend it. I think to provide for that choice, it should be the choice of the landowner or the homeowner or the builder or whoever is building this home, because in many cases you will have someone who owns the home and not living in the house and not paying for the bill, and in some cases you will have an owner that is not living in the house but paying for the bill. Some rent includes utilities. It is very difficult because you are talking about two different people involved in that transaction. So it is very difficult, because here you are saying you will ultimately pay for the energy consumption cost, but the application would

require that applicant to sign an affidavit that says he will be occupying the home and it would not work. If you are not occupying the home, but paying for the utilities, it cannot apply. There is a huge conflict there. Number one, it is not an enforceable issue because you are going to have a scenario that does not apply to any condition in this bill. So it is definitely too broad.

Council Chair Furfaro:

Vice-Chair?

Ms. Yukimura: I want to thank Councilmember Bynum for helping me get back on track. The variance can be requested only by the person who will live in the house. If that person does not exist at the time of building, then a solar water heater is put in as the least cost and most sustainable or most energy self-sufficient water heater. Because if electric is put in, or if gas is put in, then -- and the renter wanted a solar, he is not getting the choice either. So when the end-payer is not available, it is the default position is solar.

Council Chair Furfaro:

Okay. Mr. Bynum.

Mr. Bynum:
questions?

Can I ask Councilmember Yukimura some

Council Chair Furfaro:

Certainly.

Mr. Bynum: Last year this bill was introduced in the Legislature by one of our legislative team, if I recall, is that correct?

Ms. Yukimura:

Yes.

Mr. Bynum:
bill last year?

And all of our legislative team supported this

Ms. Yukimura: I do not know that they did. We just went to Senator Kouchi and got that introduced in the Senate.

Mr. Bynum: So last year I believe this passed unanimously out of Council as a recommendation, is that correct?

Ms. Yukimura:

Yes.

Mr. Bynum: So I just want -- well, I will -- should I ask for the floor again if I want to make comments? I am done with questions.

Council Chair Furfaro:
you have any more questions?

You can make your comments at the end. Do

Mr. Bynum:

No.

Council Chair Furfaro: Okay. Before I ask for public testimony, any more discussion, Councilmembers, at this point, because we will come back to more discussion. May I see a raise of hands of how many people in the audience wish to speak on this item? Gentlemen, you plan to speak on it? No? Okay. Lonnie, I am going to let you come up first. The rules are suspended. We are taking public testimony now.

There being no objections, the rules were suspended.

Mr. Sykos: Thank you, Chairman and Councilmembers. For the record Lonnie Sykos. This discussion to me is highly amusing in that the effort that the Council goes through to avoid discussing the elephant that is right there in the middle of the room. To paraphrase member Yukimura who noted that the breakdown of this bill statewide begins on Kaua'i with sixty percent, fifty percent, something variances awarded.

Ms. Yukimura: Yes.

Mr. Sykos: So the issue here is not the bill. The issue is the legal interpretation used by our department that governs this bill. The problem is the legal interpretation of this on Kaua'i. It has now infested the rest of the State. If you want to interrupt me, go ahead.

Ms. Yukimura: I just want to say that the Administrator of these variances are not the County. They are done in the State D.B.E.D.T.

Council Chair Furfaro: Lonnie, in the future, by the rules you are not the Chairman, and I am the guy deciding if she can interrupt you, okay?

Mr. Sykos: Yes.

Council Chair Furfaro: Continue with your testimony.

Mr. Sykos: My point being that until you understand why it is an issue on Kaua'i versus being an issue on the other Counties, you are not understanding what the legal issue is here. So I would like to point out that I am not an attorney, but I think that it is legally impossible to tell a spec house owner that you are not going to live in the house in the future, or if Member Nakamura wants to build a second unit to get the rental income that it is legally unconstitutional to decide in advance for her what she might do, and I own a house on Kaua'i in which I am at least the fifth owner. So yes, we are talking about this today, but this is going to move on into the future, and so even the issue of, if you build a house in the subdivision, the subdivision developer should not get to decide. Somebody should get to decide who is not going to be involved in the process until the whole subdivision deal is completed. Structurally in this I do not understand how it is enforceable. I do not understand how you are going to come up with an enforceable definition of which potential future owner gets to decide today what the builder does. I am all for the solar deal. I am not for the way it is being approached because you are just getting deeper and deeper into the same legal quagmire, and I would suggest to Council the County Attorney is the guy who you should go to to say hey, how do we write this so it accomplishes what we want to without systemically building in loopholes? That is what I think I am paying the County Attorney for. So that is the end of my public testimony. Thank you very much.

Council Chair Furfaro: Okay. Councilmember Yukimura?

Ms. Yukimura: Lonnie, would you like to just -- would it be your preference to just remove the variance entirely, the on-demand gas entirely? It is not a renewable energy.

Mr. Sykos: The issue I have with the whole deal about making people install solar, because I do not have a problem with using the power of the government to promote solar. The issue that I truly have in it is what happens if a hurricane comes, and the solar units cannot handle fifty, sixty, seventy miles per hour airborne debris crashing into them and nobody has hot water and nobody has the ability to use a generator to heat their hot water heater, to get portable propane to use their gas heater.

Ms. Yukimura: All solar water heaters have backups, either electric or gas. So that is not an issue.

Mr. Sykos: Right. So aside from that, the damage to the panels exposed to the elements versus protected inside. That is my only issue about solar water heating. In regards to this, that is not my issue. My issue is trying to write the language that gives a future potential owner rights today. It just does not exist in our legal system. Again, I am not the County or the County Attorney but my layman's view is you have to get rid of the exemptions. As soon as you have an exemption, it becomes a windfall for the attorney to do whatever they want to do. I do not know if removing the exemption creates other issues as well. So again, this is why my public testimony, this is for the attorneys to figure out.

Council Chair Furfaro: JoAnn, do you want to continue the floor with Lonnie?

Ms. Yukimura: No, thank you.

Council Chair Furfaro: If I could ask you to shut off your mic. There you go. Lonnie, we have a variance for owner-occupied units, which they could apply for the variance as owner-occupants.

Mr. Sykos: Correct.

Council Chair Furfaro: And of all of the building permits that we issued, fifty percent of the building permits had filed a variance.

Mr. Sykos: Correct.

Council Chair Furfaro: Do you know how many homes are owner-occupied? We are not finishing the formula here. I do not think we had any large subdivisions built or rental units built and so forth. How do we know that the fifty percent variance applied were people who wanted gas?

Mr. Sykos: Well, if that --

Council Chair Furfaro: You are saying that is the problem. Excuse me, JoAnn. I have the floor and if you can shut your mic off, so there is no echo. You came right to the conclusion that having the variance was a loophole. But we do not know the whole part of the formula. That is all I am pointing out. If we had six hundred units built, which I doubt, three hundred of them may have been owner-occupants who are entitled to apply for the variance.

Mr. Sykos: Correct.

Council Chair Furfaro: Right? So you are saying though because we put the variance in, it left all of these loopholes for developers. But we do not have the whole equation in front of us.

Mr. Sykos: I made the observation that that started as a phenomenon on Kaua'i and so all things being equal, that in the other Counties, it is the exact same developments, circumstance, the economy is down and not building big subdivisions all over. And thus, I am simply begging the question of why did it become a problem on Kaua'i, which appears to be a function of interpretation versus the other Counties, but I do not know that it is. It is just saying that that would be apparent and it is a systemic issue about language and thus, it is a legal opinion.

Council Chair Furfaro: It just seems to me, if we wanted to track the statistical information one of the other question we should have asked is of the homes built on Kaua'i, the total for three years here is about two hundred and ten, how many of those are owner-occupants who qualified for the variance? And we do not know that part.

Mr. Sykos: Correct. Even in an owner-occupied house on Kaua'i, you have three categories in which one of them occupies it full-time, one of them occupies it for, I think it is more than six months out of the year to get the homeowner's tax-exemption and the person who occupies it part of the year, but not enough. So all three of those owners would appear to qualify for the gas exemption, which I am not disputing. I am simply stating if the goal is to get solar heating on, this is ripe with loopholes as a negative connotation. It is ripe with allowable variances.

Council Chair Furfaro: In three years, sixty-five percent of our homes applied for the variance. Sixty-five percent. That is more than fifty percent. But we do not know of the people who built homes how many of them are going to be owner-occupied. We do not know that. We need to do a little more research here.

Mr. Sykos: Correct.

Council Chair Furfaro: Vice-Chair Yukimura, you have a question for Lonnie?

Ms. Yukimura: No.

Council Chair Furfaro: Thank you, Lonnie. Open for public testimony here, next public speaker.

GLEN TAKENOUCHI: Good morning and aloha Council Chair Furfaro and Vice-Chair Yukimura and distinguished Councilmembers. I did submit my written testimony, so instead of reading it, I hope you had a chance to review it. Instead of reading it, I just wanted to summarize my thoughts, if that is okay with you.

Council Chair Furfaro: That is fine with me, go ahead.

Mr. Takenouchi: For the record, I am the General Manager for Hawaii Gas Company now called Hawaii Gas on Kaua'i. I just wanted to say propane is a firm source of clean and reliable energy that customers can count on in

the event of a natural disaster, maybe the only source available to residents if the solar water heating unit is damaged and power is interrupted. If this amendment is approved, we are advocating for all future residential communities to have solar water heaters with all electric infrastructure and appliances. Right now on Kaua'i, residential customers pay an average of about \$0.44 per kilowatt hour energy equivalent of \$29 for a million btus. In short, propane is fifty percent and sixty-seven less expensive respectively than electricity. If we truly wanted to protect consumers, protect the environment and lower the cost of energy on Kaua'i, we would advocate for solar water heaters would be propane, not electric backup, and propane infrastructure for additional appliances such as ranges and dryers. This approach will provide the most secure, clean, and cost-effective source of energy for our community. And if there is a lower source -- lower cost source in the future such as liquid natural gas, these communities will have the infrastructure in place to take advantage of that source of energy. As many of you may know, the Hawaii Gas has filed with the Federal Energy Regulatory Commission to bring in natural gas to Hawai'i and to Kaua'i. If this amendment is approved, it will foreclose on the opportunity to use a source of clean and affordable energy in Kaua'i's future residential communities. I sincerely thank you for allowing me to testify before you today. Any questions?

Council Chair Furfaro: Glen, first question I had for you, as I noted, I had eighty-six petitions delivered to me today.

Mr. Takenouchi: Yes, sir.

Council Chair Furfaro: Cheryl Leiafua, is she, in fact, an employee of the gas company?

Mr. Takenouchi: She is.

Council Chair Furfaro: Thank you. Members, questions? Mr. Chang.

Mr. Chang: Glen, thank you and thanks for being here. We had this discussion last year and you also had the testimony last year that the State of Hawai'i and Kaua'i would get natural gas resources. Did you let us know back then when you expect this technology to come into the State and Kaua'i?

Mr. Takenouchi: I do not believe at that time we had any indication of when. We are going through the regulatory process right now. And we hope to determine after our approval when we can do that. There are of course some other hurdles to be done and, in fact, if you do not mind, I could call up Joe, our Senior Vice President.

Mr. Chang: If it is all right, Mr. Chair? We have a second mic here.

Mr. Takenouchi: He could better address on the l.n.g. side. He is doing our l.n.g. resources.

JOSEPH J. BOIVIN JR., Senior Vice President: Good morning, Joe, Senior Vice President of The Gas Company. I have come over from O'ahu today. About two weeks ago we filed with the F.E.R.C.

Mr. Chang:
a favor -- L.n.g.?

Hold on for one second, Joe and Glen. Do us

Mr. Boivin: L.n.g. stands for liquefied natural gas and it is simply natural gas cooled to negative two hundred fifty-nine degrees Fahrenheit. It is like water and freezing it below thirty-two degrees. So we applied to the Federal Energy Regulatory Commission about two weeks ago for our multi-phased plan to bring natural gas to Hawai'i from the mainland in the form of l.n.g. L.n.g. is just an effective way to ship gas in a liquid form. We do not know when the F.E.R.C. will approve the first phase of our project. But we are moving forward with bringing in the first small-scale shipment of l.n.g. to Hawai'i by the end of the year as a source of emergency backup energy on O'ahu, while we perform some routine pipeline maintenance. So if things go according to plan, we will have the Federal Energy Regulatory Commission's blessing to bring natural gas over by waterborne vessel to Hawai'i by the end of year and do so in ten thousand gallon cryogenic shipping containers which is basically a large thermos with an inner-steel vessel surrounded by an insulated material and an outer-vessel wrapped in a steel frame so that you can store them. We will source the gas from the mainland and likely depart from port of Long Beach on a conventional ship operated by Matson or Horizon and arrive in O'ahu and can be rolled on, rolled off and brought out to the point of use. So over the next few years, the model for expanding this service will be in these roll on/roll off forty foot cryogenic shipping containers. They look very much like a large propane tank that you see at any hotel in Hawai'i, and they will be placed on site and could either displace a more expensive and an environmentally un-friendly fuel such as diesel with this clean and lower cost fuel. So we will start expanding that out Statewide, early next year is the plan. And then as this goes forward, we have just sought F.E.R.C.'s approval for phase one, which is the small shipping containers, but three, five, seven years out, it is quite a range, but only because this is a very complicated matter. We will be identifying specific sites for terminal facilities to bring in a larger tanker. And when we can bring in a larger tanker of this material, which we will need F.E.R.C. oversight for, we will be able to significantly lower the cost of energy throughout Hawai'i.

Mr. Chang: So do you anticipate any snags during this approval process or is it moving along? How are we doing?

Mr. Boivin: It just went in two weeks ago and so far I would say that we have widespread support. I have not run into any opposition in Hawai'i yet and to the contrary there is a lot of enthusiasm about it because the facts are this: Natural gas emits forty percent less carbon dioxide than ethanol, diesel, or coal. It emits ninety percent less sulfur dioxide than those power plants so it is clean. And if you look at cost of energy, for example on Kaua'i right now I think we are spending somewhere around \$25.00-\$26.00 per m.m.b.t.u. for our diesel and to make electricity.

Mr. Chang: M.m.b.t.u.?

Mr. Boivin: I am sorry, a million British thermal units. So if that is what we are now paying for our feed stock to produce electricity on Kaua'i, and then that produces through the equipment that we have here, \$0.44 kilowatt hour electricity.

Council Chair Furfaro: Mr. Chang, I want to remind you these new energy sources are a great piece of information for us and I appreciate you being

here. But we are starting to stray a little bit from the agenda. Okay? The agenda deals with the Bill as it relates to solar power. The Bill does not relate to your strategic thinking, it relates to other energy sources, so I will let Mr. Chang wrap up his questions, but I want to make sure we understand that we need to stay within the parameters of the agenda, please.

Mr. Chang: I understand that. I do not have any more questions. Thank you.

Mr. Boivin: Thank you.

Council Chair Furfaro: Thank you, Mr. Chang. Vice-Chair Yukimura?

Ms. Yukimura: Thank you Glen for being here. In your fourth to the last paragraph you say the best solution for Kaua'i is to install solar water heaters where appropriate and use gas as a backup source of energy and for water heating and all cooking and drying. So then you say in your last sentence, "Approving this amendment would foreclose the opportunity to use this source of clean, affordable energy in Kaua'i's future residential communities." But nothing in this amendment will foreclose using water -- sorry, gas, for cooking or drying, will it?

Mr. Takenouchi: Let me clarify, and yes I do agree that it is a little confusing what we stated there, but to clarify, if the developers were erred to just put in solar, he may opt not to put in the gas infrastructure underground in their developments and therefore, would limit...a subdivision would basically be an all-electric subdivision versus having any gas infrastructure.

Ms. Yukimura: If they opted to put solar with gas back up for water heating and then gas for the other appliances, I mean, you would have to make a competitive argument, vis-a-vis electricity. Why would you stand in the way of becoming more energy efficient and less relying on fossil fuels because natural gas is still a fossil fuel, right?

Mr. Takenouchi: Yes.

Ms. Yukimura: I can certainly see the benefits of natural gas over propane so I am excited about the possibility here, and I think the possibilities of actually generating electricity, I do not know all the details, but that is certainly something that we need to look at. But natural gas is not more efficient than solar water heating. I do not think you can argue that.

Mr. Boivin: I do not think we would. We would advocate for solar water heating. The issue is really when the water heater needs backup energy, which it will need daily. It does at my house. I have solar water heating and then I am spending \$0.44 a kilowatt hour for that energy. So a household in Kaua'i...

Ms. Yukimura: \$0.44, who are you paying for solar energy?

Mr. Boivin: \$0.44 for your electrical energy backup. Your water heater is going to displace approximately thirty to forty percent of your kilowatt hours in a household, okay? And unless the sun is shining all day long

every day and you only use that hot water it produces, you are fine, but if you have a cloudy day or you draw more hot water than what is in the eighty gallon tank, you have to back up a solar water heater with an electric water heating which is what is installed and if you do that that is paying \$0.44 a kilowatt hour.

Ms. Yukimura: Excuse me, if your solar water heater is properly oriented to the sun and properly sized, most of the time every day, like ninety percent of the days in the year, you will be able to use solar only for water heating. That is a standard and that has been testified over and over again by many solar water heaters and other more neutral bodies. So let us not pass out inaccurate information, and if your solar water heater, Joe, is not providing you solar hot water most of the days, then it is probably undersized.

Mr. Boivin: Well, thank you but it has reduced thirty-five percent of my kilowatt usage per year, but we still have to buy electricity. That is the fact for a solar water heater and when we do, we have to spend that amount of money.

Ms. Yukimura: You do not have to buy...

Council Chair Furfaro: Council Vice-Chair, let him finish his explanation.

Mr. Boivin: The point I am trying to make is that if we build a community, okay, upfront as the developer looks at the economics of putting in infrastructure, and he is forced to go ahead and put solar on all of the homes there, then he may not have an economic decision or an economic justification to put in gas infrastructure. And if that is the case, then the community would likely be built without that, and then in the future, all of those homes would not be able to get lower-cost gas energy.

Ms. Yukimura: Well, then you have to make the arguments to the developer, but not ask a public policy to change just so The Gas Company can get more business. The question is—you know on O'ahu and we have checked, Chair, most of the variances are gas variances that are being applied for. And on O'ahu, it is only five percent. And so people – developers are able to put in and build systems and sell them that are more energy-efficient. Now you can go and make your arguments to the developers that they should put in solar and with solar gas water backup and also gas appliances, which have the advantage during times of natural disaster to be more flexible and more self-supporting, because they are decentralized. But to ask us to change public policy that is moving us towards energy sustainability so that you would have an easier time to make arguments or get business...

Mr. Boivin: I am not asking anybody to change anything. I am asking not to change anything. I think the system is working fine as it is.

Ms. Yukimura: And how much more energy self-sufficient are we with residential homes, in the places where the variances are sixty-five percent versus five percent?

Mr. Boivin: How much more energy sustainable are we?

Ms. Yukimura: Yes.

Mr. Boivin: Is that the question?

Ms. Yukimura: Yes.

Mr. Boivin: You mean on Kaua'i because of the number of variances?

Ms. Yukimura: No, in any hypothetical situation where gas variances are sixty-five percent rather than five percent? How much more off of fossil fuels are we?

Mr. Boivin: I cannot give you a barrel equivalent off of top of my head.

Ms. Yukimura: You are saying it is working well and we are moving towards our goal of energy sustainability?

Mr. Boivin: Certainly, if you look at all of the units that are built each year and the number that have solar water heaters, I think we are approaching two-thirds of the homes in the State now, and so I would say it has been a tremendous success at the residential level.

Ms. Yukimura: On Kaua'i, we are not doing that in terms of solar water heating and neither on the Big Island where the percentage is fifty percent and Maui's percentage is going from three percent originally now to twelve percent.

Mr. Boivin: I think what is interesting to look at is that there is a choice being made by consumers to elect a gas product, and in the case of the Big Island, you have a lot of remote homes or they are in clusters of very expensive homes and they prefer those type of products, but they have the choice to put on their homes what they want. Some of those folks, I have no doubt, energy security is a factor so they know that they have a gas product and it will be there in severe weather, extended cloudy days or in the case of electric outages. They will have a gaseous product to provide them with what they need in their home.

Ms. Yukimura: You can have that with a solar water heater and gas back up?

Mr. Boivin: I agree.

Mr. Takenouchi: And that is what we stated.

Ms. Yukimura: So that is the concern of the Legislature when they pass the initial Bill that because the upfront costs of a solar water heater are higher that the developer will choose to put in the cheaper one because it lowers his costs, but he is not the one who is going to pay the electric bill. You are not giving those who want a solar water heater the choice of having a solar water heater, right? And if the ultimate owner saw the cost between the lifecycle cost of energy -- sorry, the lifecycle cost of gas and solar, they might want to choose solar. That is the choice we are allowing for the end-owner to make, not the developer.

Council Chair Furfaro: Questions for the gentlemen? Not to distort my earlier comments but these comparisons are very important for me on an owner-occupant. In Honolulu, their numbers, I mean, you have subdivisions being built in Mililani, Makakilo, Kapolei, condo projects, Pūpūkea. There is a lot of spec homes, excuse my term there, but that is what they are until they are sold, being built in a community of a million people. A little different, in three years, I think we did three hundred twenty home permits of which two hundred ten roughly opted for the variance which is a choice in the bill. But we do not have these really large subdivisions being built. Vice-Chair Yukimura, I saw your light on, but I am going to go to Councilmember Nakamura.

Ms. Nakamura: Thank you, Glen, for your testimony. Last year in 2011, there were seventy solar water variances on Kaua'i and I was wondering were these large subdivisions? I think most of them had variances because they went with tankless gas. That is my assumption.

Mr. Takenouchi: I believe you are correct, yes.

Ms. Nakamura: I was just wondering, do you believe that these are large-scale subdivisions or customer-built homes?

Mr. Takenouchi: In my estimation, most of those are custom-built homes.

Ms. Nakamura: Do you believe that most of these were owner-occupant homes? Do you have any sense of whether or what percentage of those might have been owner-occupant homes? Or possibly for speculation purposes?

Mr. Takenouchi: A lot of these homes were high-end homes and I cannot say whether they were owner-occupant or not, but a majority were high-end homes.

Ms. Nakamura: I have not seen any in the last few years and, in fact, major subdivisions being built or even single-family affordable housing projects being built. It seems to me that these are individual homes.

Mr. Takenouchi: You are correct.

Ms. Nakamura: We just do not have a sense of percentage of owner-occupancy.

Mr. Takenouchi: As Joe and I were discussing too, on O'ahu, there are a lot of military homes that are being built.

Ms. Nakamura: Right.

Mr. Takenouchi: A lot of military residential, and I guess they are mandated solar, I am not sure.

Ms. Nakamura: Thank you very much.

Council Chair Furfaro: Any more questions? Mr. Bynum?

Mr. Bynum: I was just looking at – I am assuming these "my choice" were circulated at the gas company, is that correct?

Mr. Takenouchi: Some of them were, yes. We do not have eighty-six employees.

Mr. Bynum: I am sorry?

Mr. Takenouchi: We do not have eighty-six employees. We have twenty employees.

Mr. Bynum: Right. But if I came into the gas company, I would have an opportunity to sign one of these, correct?

Mr. Takenouchi: Correct.

Mr. Bynum: Just for the record, the language it says, "Please do not amend HRS Chapter 196, I would like to choose my water heating solution and not have it decided for me." The legislative intent of this Bill is absolutely clear. They said there should be a gas on-demand variance for the end-user if they choose to do that. So if I build my home and I am going to live in it and it should be my choice to do solar or on-demand gas. Where I think people are not having choice is someone builds two homes that they intend to sell, and they put on-demand gas, but the end-user did not have a choice. That clearly was not the intent of the original Act. Right?

Mr. Takenouchi: I cannot answer that.

Mr. Bynum: Do you agree with that?

Mr. Takenouchi: I cannot answer that. I was not the originator of the bill.

Mr. Bynum: I would say that I built my home, I have gas. I love gas for cooking and clothes heating and thought it was a great choice and I have a solar water heating system that has an electric backup, Joe, but have I to manually switch the switch. I have done it once this year in March. I do not think I did it for a couple of years before that. And I know when I am using electricity because I have to go to the circuit breaker and flip the switch. And I still have a pretty high electric bill and when I flip the switch and when I did that, it heats up pretty quick in a few minutes and when I flipped it off, that is the only use I have had in a couple of years. But I believe that we are trying to fix a loophole, you know? D.B.E.D.T. came here last time and said we do not have the language in this Bill, we need to follow through with the legislative intent. I think that is why this Council voted unanimously last year to let us fix this loophole to make sure that the choice is exercised by the people that were intended. You know, I almost bought a new home several months ago and I was shopping. And I saw two homes in a lot clearly built as spec homes right next to each other with on-demand gas. I would not buy those homes because of on-demand gas, because I know I am the guy who will be there and I want to do what is environmentally sound. But because they were built that way, now I have to retrofit, and speaking for me personally, it makes me uncomfortable that the Legislature passed this Bill and the intent is being circumvented in those kinds of instances.

Council Chair Furfaro: Excuse me, Mr. Bynum, do you have questions for the testifiers? Because you can hold your comments until we come back together.

Mr. Bynum: Yes, I think I have asked a few questions. Is it your understanding of the original intent of the Bill was that the end-user would be the decision-maker about whether to exercise this variance?

Mr. Takenouchi: I cannot say that it was the intent of the end-user, because from what my understanding is that the developer also had the choice of choosing.

Mr. Bynum: Thank you.

Council Chair Furfaro: Any more questions for The Gas Company personnel that are here? If not, thank you very much. Is there anyone else in the audience that would like to give testimony at this point before I call the meeting back to order? Mr. Rosa, you wanted to testify? Please come up.

Mr. Rosa: For the record, Joe Rosa. Hearing all about this for solar energy, et cetera, the County has all of this new housing which came out at Lihu'e Industrial tract, Waipouli, et cetera, are they run by solar or gas? Those are the questions. You people, if you are going to have housing, if you want to force something onto the public should be the people to set the example.

Council Chair Furfaro: Our housing projects do have these alternative energies. The County's housing program has, like in Pa'anau Phase two we have solar. I hope that answers your question.

Mr. Rosa: I was not aware of that, because like I say, if you are going to enforce something onto the general public, the County or the State should set the precedence. I for one, I have gas heater. I got an electric stove. I have mine spread around because when I had my house built there were certain regulations and stipulations that I had to go by too to get my V.A. loan and things to build my house a certain way. I cannot go against them if I wanted my loan. You people are sort of enforcing something that you leave the public no choice. Like today's subdivision, most of them are by groups. You just buy the house the way it is, take it or leave it. I would rather see fee-simple land available for those to build homes of their dream how they want. And if they want to pay the bill, pay the bill. I think one thing here on Kaua'i, it is a shame, seven major rivers on this island and there is no power other than what the plantations have. I think the County should go on record with the seven major rivers to have hydroelectric power on Kaua'i. That is the cheapest source. So I think you can go see the T.V. and the Administration and see how you can do and utilize something to get those hydropowers here on Kaua'i. Seven major rivers!

Council Chair Furfaro: Joe, just as I reminded Mr. Chang, the subject is the solar piece.

Mr. Rosa: It is, but Jay, solar energy is hydropower. I do not think I am off the subject. I am not off the beat.

Council Chair Furfaro: Well, I make that ruling.

Mr. Rosa: I understand.

Council Chair Furfaro: Just as I shared –

Mr. Rosa: You are trying to say something, Jay. You are the Chairman and I respect you, but there are things that have bearing on this for solar energy and that is hydropower with the seven major rivers we have here on Kaua'i. Thank you.

Council Chair Furfaro: Thank you very much. Is there anyone else who would like to -- Lonnie, you spoke already on this Bill?

Mr. Sykos: Yes.

Council Chair Furfaro: Yes? And did Lonnie use his whole six minutes? Lonnie, I will let you come up for another two minutes. You will have to re-introduce yourself, Lonnie.

Mr. Sykos: Thank you, Chairman, for the record Lonnie Sykos, I would just like to address the issue of exemptions or variances on the Big Island. I have owned property on the Big Island and I am familiar with it. My business allies were in agriculture on the Big Island. The statistics need to be researched because number one: there is tens of thousands of homes on the Big Island that are on dirt roads with no electrical or water service and the only people that come to them are The Gas Company. The Police do not even want to go to them, because the Police drive private vehicles versus Police Department vehicles and they do not want to bust their private cars up. So if you live in Hawaiian Acres or Hawaiian Ocean View Estates or any of the big giant subdivisions, the mass of them probably still today, you need a real four-wheel drive to get to their house. They are on water catchment, they do not have access to piped water, and eighty gallons of water inside a water tank is a big amount of water, not to mention that you have to run a generator or solar to get the electricity to run the pumps. So it is much easier for them, they have a whole industry to get their dough boy swimming pool and little twelve volt pump to run it through a demand heater. So to them that variance makes sense, because their infrastructure is completely different from ours. So you could look into this as part of the reason why the variances are so different from island County to County. Thank you.

Council Chair Furfaro: Lonnie, let us see if we have any questions for you. Vice-Chair Yukimura?

Ms. Yukimura: Did you mention a swimming pool?

Mr. Sykos: Dough boy swimming pool, above-ground swimming pool is the number one device to hold water on the Big Island and twenty years ago these were three companies in Hilo that sold them.

Ms. Yukimura: I do not quite understand your point with respect to solar water heating. It is a decentralized system as well. And so I do not get your point at all.

Mr. Sykos: On the Big Island you can buy a parcel of land for \$3,000.00, and for \$20,000.00 have a structure that the County will permit.

So people living in an environment incomprehensible because there is nowhere on Kaua'i that approximates how it is living in either rural Maui where I am from...

Ms. Yukimura:
for the Big Island?

So you are saying that this Bill will not work

Mr. Sykos: I am saying the reason the exemptions are so high on the Big Island and why exemptions are perhaps going up on Maui is there are substantial regions. I lived in Hāna for twenty-five years and I never had County water. I was lucky to have a telephone. I had a paved road. That was it and the guys came and picked the trash up once a week. Unless you live in the core of town, you have to find your own water. You have to make your own electricity. So people living in that rural environment, yes, it would seem that the solar thing is beneficial, but the problem for them is that they are poor. They do not have however many thousands of dollars to put upfront to buy a solar system. You have another issue that some of the people moving into the areas are fantastically wealthy and they may not want to invest in it themselves, but my guess is that most of these exemptions are these people living extreme rural lifestyles.

Council Chair Furfaro: On that point, you have expired your remaining time. Thank you, Lonnie. Anyone else in the audience? No, so I would like to call the meeting back to order for discussion. Mr. Bynum?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: Let me just put this in context. The Legislature passed a Bill some years ago that said if you have construction, you should put solar water heating on because it is environmentally sound and it has a beneficial impact to everyone in Hawai'i to reduce our use of fossil fuels. But they put sensible variances in there. And trying to maintain the end-user's choice, some of those variances are if you have a very poor solar profile and it is not practical. One of those was to allow for on-demand gas, if the end-user chose to do that. And the end-user, meaning the person who actually pays the electric bill. The intent could not be more clear in that Bill from the Legislature. Last year D.B.E.D.T. came here, who administers came here and said, "Hey, a lot of these homes are being built for rental or spec and we are giving these variances because the current language is not strong enough to realize the Legislature's intent." For the Council, will we recommend to the Legislature that they fix that loophole? Last year we approved that unanimously.

Initially if someone said let us eliminate the variance, I did not agree with that. I agreed with having language in the bill to allow the State D.B.E.D.T. at their recommendation, and the State energy people are saying that we want this and to give them that. To me it preserves choices the way it is meant to. As I mentioned before, I was shopping for homes and saw really nice homes and house lots that I would like to perhaps to purchase. They were built clearly for spec, but they have on-demand tank, and for me, I want the developers to hear this as a consumer, it made me less likely to buy that house, because I do not want to pay those bills, and I want to do what is environmentally good for our State. I want solar water heating, but because they constructed it without putting in those, to retro-fit it, it is going to be more expensive than if it would have been built according to this intent to begin with. A & B built some spec cottages at Kukui'ula that cost over \$1 million and they did not want the aesthetics -- they wanted it to

look nicer and so some wealthy people if they are building their own home, they have that opportunity, even for aesthetic purposes, but those folks who are building rentals and are consumers are going to have to pay that electric bill. The intent of this bill was to eliminate that loophole and let D.B.E.D.T. administer it the way they would like to, the way they intended to. And for all of those reasons, I do not think takes away choice. I think it increases choice for the end-users. I am going to be in support of making a recommendation for the second year and hopefully Senator Kouchi will agree again and introduce it as he did last year.

Council Chair Furfaro:

Mr. Rapozo?

Mr. Rapozo: Thank you. And I just want to clarify that last year and, in fact October 5 is when we addressed this last year to have this placed on agenda or the H.S.A.C. package, the motion was received by a five to two vote. So it was not unanimous. It was later amended and it did pass unanimously for the Council package, but for the H.S.A.C. package, the item was received by a five to two vote. So it was not passed unanimously out of Council for H.S.A.C. I got the minutes only because I wanted to see how far -- how different we are today and I could almost read the same testimony because it applies today as it did back in October of 2011. Let me just touch on a few of the things. Really I could read this verbatim. Last year I talked about choice, taking away choice. This takes away choice. Please do not think it does not. It does. It does take away the choice of a consumer. That is concerning and we did that a few weeks ago with a Bill, it is the same thing where Government is saying you can do this or you cannot do that. Last year in October, I said, if the Government is so interested in sustainable actions let us incentivise the installation of solar heaters. If the County believes that this is the way or if the State believes that this is the way, let us incentivise it by giving it a tax credit. "Put a solar heater and do what is right for the community and we will give you a \$300.00, \$500.00 tax credit incentive." That was the suggestion I had made last year. And there is testimony from the Contractor's Association that says a year ago that the requirement for solar heaters can take a qualified person for a home mortgage out of qualification. I know last year as I read minutes somebody mentioned it is a slim percentage of people that would be affected. If "slim," but if you are the person who got affected, it is not slim. And it does happen. The additional costs. There was also testimony last year that says the cost of the solar heater long-term is much cheaper. And this I will read, because I do not want to misstate what I thought I remembered. This is what I testified to last year. I had a call from a solar contractor and I should have asked for him to submit his testimony in writing. He called me after he read the article in the paper and said, "Mel, to be honest with you, I am a solar contractor, but if you add up the money that is paid for, a lot of the people who live in areas that do not have sun all the time, when you add that additional power, whether it is gas or electric, you add up the cost of lifecycle of the solar heating system, it is high." And that is a solar heating contractor who told me this and he has been in business on this island for a very long time and deals with customers who do not have the twenty-four seven sun, obviously, mountain ranges, et cetera. So that was a solar contractor who would benefit from this Bill. But he has been a local guy here all of his life and he had some serious concern. It boils down to that. I think the concept is a good one. I agree, if everyone could get solar, that is fine. I choose gas simply because I want the reliability. I do. When the hurricane came, I had hot water. I could cook. So I realize that I may be upsetting a lot of energy green people, but the reality is that is up to the developer. Mr. Bynum talked about Kukui'ula and aesthetics, that is their choice. That is the developer—he owns the land, he develops the project, that is their choice. We do not regulate the social policy, regardless, "You need to put solar,

even if your development plans do not want it, no, sorry you will put it on." That is not the American way. We need to leave it up to the people to make the right choice. We can incentivise it by offering some rewards in the form of tax breaks and we can educate. And I think that is the key components that Government should be chasing and not mandating people cannot do something. That bothers me when we utilize our authority to do that. So I will not be supporting it as I did not last year and we will see what happens. Thank you.

Council Chair Furfaro:

Vice-Chair Yukimura?

Ms. Yukimura: I first want to say that the whole discussion that Councilmember Rapozo has read from was on a totally different matter. It was on removing the variance. The gas variance entirely. That is what failed in Committee. And it was not about this other proposal that allows the variance, and allows the consumer, if there is a consumer, to say, yes or no after they have read the information, which is an educational piece about the lifecycle costs. So this idea about it affecting a mortgage and dropping people outside of the qualifications for a mortgage, if there is a homeowner, and I remember Ron Sakoda's testimony, it was about removing the variance, not giving people the ability to get a gas variance. In this case, if there is a young couple and they take a look at their mortgage and they find out that the solar water heater will cause them to fall out of the qualification for a mortgage, they can apply for a gas variance, an on-demand gas variance. They can make the application. They are the home-buyer. They are going to be in the case where they are building. And then this idea about if you do not have enough sun you still have to put a solar water heater, there are three variances that allow you...actually two variances that say if you do not have enough solar resources and you can show from a lifecycle cost basis that it is more expensive to put solar than on-demand gas, then you can do it. So all of those arguments fall away. And what we are talking about is consumer choice, because today's situation that this amendment would change, the consumer is not making the choice. The developer is making the choice based on his concerns and for him, the upfront cost of solar is higher than putting in on-demand gas. So it will drop the developer's costs and he can charge more for a house theoretically because he did not have as high a cost, but the buyer has to live with an increasingly high bill and a higher lifecycle cost. And I want to ask Scott to put on the screen the testimony from Brian Woolsey, who does a cost comparison of single-family water heating systems, and shows that over the life of a solar water heater, you are going to be paying much, much more if you put in on-demand gas instead. And there are explanations about the assumptions, but I think that they make some pretty standard assumptions. So you are not cutting out gas at all. You are protecting the consumer, if there is a consumer. If there is not a consumer at the time of construction, you are going for the lower lifecycle cost of gas, and you are taking the environmentally-sound solution. So can we turn off the lights? You will see that the highest- I guess kind of purple line is on-demand gas, and it is a lower upfront cost because it is just cheaper to buy an on-demand gas system than a solar water heater or a photovoltaic, which is also on the chart. But you will see that over the long-term, the costs is much higher to the consumer, the person in the house, to have on-demand gas than solar thermal, which is that flat line. You pay the initial costs and then after that, the heat is free, you are living off the sun. Photovoltaic has a few more expenses, maintenance is higher for photovoltaic than it is for solar thermal. But overall, that is what you are denying the consumer, when you allow a developer to put in on-demand gas. Plus, on-demand gas, whether it is propane or natural gas, is a fossil fuel and we are not getting off of fossil fuel. But if there is an end-owner and they want the more expensive life-cycle system, they can have it. We allow them to say apply for the

variance. So the consumer actually has more choice, and when the consumer is not known at the time of development, the lower-cost choice for the consumer is the one that goes in. And the more environmentally-sound choice is the one that goes in. So this is both an energy sustainability and consumer protection amendment. Everyone speaks about the need for Kaua'i to become more energy sustainable and we will speak until forever and not become sustainable unless we take specific actions to move us in that direction. And the Bill before us is a specific action that will definitely move us towards energy sustainability and it will also help our families save substantial amounts of money over the lifetime of the solar water heating system, from \$10,000.00 to \$20,000.00 over the life of a system, enough to start a college fund. But more importantly, it takes us off of fossil fuels and the hurricane disaster things; you can have a gas backup, if you want. So if your solar system goes out, you have a gas backup. You know? And I think it is smart to get a gas stove also, because then you are more independent. But this Bill does not stop people from doing that. So they can get gas. So I urge my colleagues to vote for this, because this will take us towards one of our main goals, energy sustainability, and at the same time, you know, many mandates, like hurricane clips and so forth, they actually cost more money. With this mandate of solar, in the long run, it actually saves the consumer money.

Council Chair Furfaro: Mr. Chang?

Mr. Chang: Chairman, would I be able to address a question to Council Vice-Chair Yukimura.

Council Chair Furfaro: Go right ahead.

Mr. Chang: So Vice-Chair, can you clarify this for me please. What you are saying is that the homeowner or end-owner will have every right to choose a system or a combination of systems?

Ms. Yukimura: If they are at the time of building, so if a family that wants to build a house on a vacant lot, they have that choice. I actually think that they probably have a better chance of getting a loan with the solar because the financing company knows that they can save money.

Mr. Chang: So the homeowner will have every right to choose a system or a combination of systems?

Ms. Yukimura: Right. If they want on-demand gas, they can apply for that variance.

Mr. Chang: Thank you.

Council Chair Furfaro: Anyone else who wishes to speak?
Mr. Rapozo?

Mr. Rapozo: I just want to make a point that it is not just a question, you have to meet the conditions of the variance. You have got to meet the requirements of the variances, I mean of the Bill. And I guess, if I may, Mr. Chair, are you done? I guess the concern is where do we go next I think? We all know that eight-cylinder vehicles cost more upfront. They cost more to maintain. They cost more over a twenty-year period. We know that they burn more fossil fuel. They burn more oil. They burn more gas because of the bigger engine.

And that is my concern. What trend are we on? Where are we headed? Are we next going to ask the state to require a variance request if you want to buy an eight-cylinder versus four-cylinder, that in fact every new car that you buy has to be four-cylinder? Unless you can prove that maybe you need a truck because of your business. I think that is the concern that I am having, removal of that choice in that respect. The government is saying that you cannot. That is the concern, versus saying hey, it is better to go with the four-cylinder because you will save money in the future. For some people, money is not an issue for them, but we all know if everybody drove four-cylinders or electrical vehicles we would help to save the environment. It might sound like an extreme analogy, but it is the same philosophy. Government is telling the people no, because it is better to go with a solar and it is better for the environment. You apply that same argument to a vehicle purchase, people would say Mel, "You are crazy." It is the same philosophy, just applied to a different industry. So that is my concern. When will government stop with the regulations that you must do this and you must not do that? I think that is all I am concerned about. Thank you.

Council Chair Furfaro:

Councilmember Nakamura?

Ms. Nakamura: Thank you, Chair. This has been a very difficult issue for me. And it was too, last year as well. But I support the 2008 Solar Roof Act and I think it is a good thing for Hawai'i to move in this direction and in my discussion with a major developer of affordable housing in the State of Hawai'i, they are putting in solar in every affordable housing project that is being built as a given. They are not looking at variances. Because they do production development throughout the State, the cost of doing it at the very beginning is lower and much more efficient for them to do. And so to me, on the affordable housing side, it is working. Developers also are responding to the interests of consumers to have lower water heating costs and are again trying to make their homes more energy-efficient from the consumer point of view. So I guess what I -- I know there is a huge variance on Kaua'i. And I am just wondering what has been done in the last year to really work with those architects, developers, to educate them about how the lifecycle costs could be reduced, just by sitting down and talking to them. I think there are a handful of them who are requesting these variances on this island, and I am not sure about -- I have not heard about any attempts to have that conversation. So that is an approach to me that I would like to learn more about. Also, I am concerned that a lot of times that the people, the ultimate payer of that bill will be a renter and that the person who purchased the land, who puts in the investment to build should have a choice in what product they want to put on the market. So I have some concerns and to me the consumer can choose whether or not, like Councilmember Bynum did, was you choose not to buy that home, because it did not have the solar water heater that you were looking for in a product. So to me that is one way people can choose. So I am also concerned about Councilmember Rapozo's issue about freedom of choice. Do we then -- because trucks with very high gas consumption have a higher dependency on oil, people use dishwashers, clothes dryers that all consume energy. So where do we draw the line? I am concerned about that issue. For my family going forty-five days without electricity after Hurricane Iniki, we luckily had hot water for the kids and grandmother. That was important and I think that is still ripe in people's minds. So for these reasons I will not be supporting the amendment this year.

Council Chair Furfaro: Thank you, anybody else wanting to speak on this? Mr. Chang? Council Vice-Chair Yukimura? You can have a second time.

Ms. Yukimura: Thank you in response to Councilmember Nakamura's question have we spoken to architects, I have spoken to the person, the architect who I think has applied for the most variances and pointed out these things and I do not see the numbers going down ever. That is when you need laws. The incentives are for developers or for others not in favor of the consumer protection, but more in favor of their financial sheets. Then you need laws to change that around. And so I think it shows that -- and the Legislature recognized that the upfront costs just make an incentive for the developer/builder to not put in solar and that is why you need it. Unlike a car that changes every seven years, water heating system for a house is a very long-term thing, and it has many owners, and it depends of course on how important you think it is for our community to get off of oil. If it is an optional thing and we do not have to worry much about it, then of course some of these mandates are not required. Even hurricane clips, if somebody wants their house to be blown apart in a hurricane, let it so be except that it may affect a subsequent owner. It affects the collective body of community. And that is why this issue is before us. That is why we are the most dependent on oil and fossil fuels of all the States in the Country. We are the most vulnerable. How do we get off of it? We get off of it by small steps. And this is one of the really important small steps that can have a big influence over time. Two hundred ten variances this year -- or over three years, you add up another three years and we are in a low-construction time, but you add it up over time, that is a huge number of homes that are not energy-sustainable. And we still have to work on houses that are already built or have been built before three years ago. And the irony about the incentives that Councilmember Rapozo talked about, this Bill was supposed to be a mandate. That is why the credits, the tax credits for solar water heating for new construction have been removed by the State. And yet this is not a mandate, because fifty percent or sixty percent of the new houses on Kaua'i are not having solar on it. So either we make it a full mandate by closing the loophole and still giving choice, or we should just do away with this bill and restore the tax credits from State, except that the State will say it is a much more expensive way to do it than to do it based on individual investment, which pays off by individual savings. And that was the decision of the State Legislature, except for this loophole that was designed for special business.

Council Chair Furfaro: Anybody else who wants to speak a second time before I speak? No? Okay. First of all, I want to point out that this is a Bill that goes to the Legislature and we still have to find someone to introduce it appropriately for us, as Senator Kouchi was willing to do last time. The fact of the matter there are four variances built into the Bill that deal with poor solar as a resource and deals with cost relating to lifecycles that people could apply for and talks about an opportunity for new renewable technologies that can replace solar and it also talks about the fact that primary homeowners can still get a gas variance, which is pretty much about what we did last year. It is an excellent idea from Mr. Rapozo, if we want to really walk the talk, too, we could at a rate of ninety homes being built a year, we could also offer some County incentives, whether it is \$500.00, \$750.00, for the homeowner to help offset the costs. At \$750.00, and ninety homes a year, that is about \$60,000.00. That is something that we could do. We have to think the other pieces to get people to want to do this. When it comes to homeowners and rental costs, we could also talk in terms of rental of facilities being equipped with this alternative energy, because we want people to save money on their rent, so that they can eventually become a homeowner, whether it is with Habitat projects or something that they have been saving for for a very long time. So there are built-in variances that certainly allow this and we would try to carry the message. Today, I think I also want to point out we have an absent member

and accordingly with the possibility of a tie existing here at the table, especially if there is a member absent, and the item ends up in a three to three tie, rules indicate that this automatically becomes a special item in two weeks. And should it end up in a special item in two weeks, I want to know specifically what is happening with the people that did build over the last three years that applied for the variance? It would probably be a good time for us to check what percentage of that sixty-five percent were actually homeowners. So on that note, I see it is almost 12:45 p.m. and we will have a public hearing today on two bills/items, so I would like to call for the vote as it stands now. We will do it as a roll call vote and please consider the things that I just said that would drive this bill for a revisit in two weeks. Roll call, please. One moment, we could also defer it now, so we can get that additional information.

Mr. Rapozo:

I call for the question.

Council Chair Furfaro:

Roll call, please.

The motion to approve C 2012-348 Item No. 1 was then put, and failed by the following vote:

FOR APPROVAL: Bynum, Yukimura, Furfaro
AGAINST APPROVAL: Chang, Nakamura, Rapozo
EXCUSED & NOT VOTING: Kualii

TOTAL – 3,
TOTAL – 3,
TOTAL – 1.

Council Chair Furfaro: I am going to vote aye to make this come back in two weeks so I can get statistical information. We have a 3-3 tie, which according to our rules, this item will then take immediate attention in two weeks at our next Council meeting. Please make note of my queries to the Building Department on the rationale behind the building permits that applied for variances. I think it would be good for us to have that information. On that note we are going to break for luncheon, and we will be back at 1:45 p.m. and we will start with a Public Hearing.

There being no objection, the meeting was recessed at 12:45 p.m.

The meeting reconvened at 1:57 p.m., and proceeded as follows:

Council Chair Furfaro: We will go back to our item, but something at lunchtime came to my attention, which is a timing issue. And it looks like as we had a 3-3 tie on the solar bill, to meet the deadlines for the appropriate transmittal to the HSAC conference, we would have to have a meeting on the 29th, so I will be scheduling a meeting for the first thirty minutes of August 29, so we can come to the appropriate conclusion and then share with Mr. Rapozo, as he is President HSAC, what will go over. So members, please make note and again, because it was a 3-3 tie it has priority over all the other meeting business and will be first on the agenda. Members, is that acceptable for you folks for the 29th? Thank you very much. Please note to the Clerk to post a special meeting. We will go to the next item then.

C 2012-348 Communication (08/15/2012) from Councilmember Kualii, requesting Council approval to include the following proposals in the 2013 Hawai'i State Association of Counties Legislative Package and the 2013 County of Kaua'i Legislative Package: 2. A Bill For An Act Relating to Affordable Housing Credits

Council Chair Furfaro: Very good.

Ms. Yukimura moved to approve C 2012-348 Item No. 2, seconded by Mr. Chang.

Council Chair Furfaro: Very good. We have a motion and second. Is there anyone in the audience who wishes to give testimony on this item? Seeing no one, the meeting is called back to order. Members, any commentary? Vice-Chair Yukimura?

Ms. Yukimura: Mr. Chair, I think we have been over this issue as we have seen there is Act 98, which allows the Department of Hawaiian Homelands to take basically all of the County's Affordable Housing Credits and use them for D.H.H.L. purposes and the amendment that is proposed here would require -- it still allows some of the credits to be used for D.H.H.L. lands, but allows the various Counties to assert their interests and to balance out the use of those credits, so that we are not committing any kind of discrimination and that we are trying to reach all of the people who need affordable housing.

Council Chair Furfaro: Any more discussion? Councilmember Nakamura?

Ms. Nakamura: I want to thank Councilmember Yukimura for putting this proposal together.

Council Chair Furfaro: Any more comments? If not, roll call, please, Madame Clerk.

The motion to approve C 2012-348 Item No. 2 was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Nakamura, Rapozo,	
Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL: None	TOTAL – 0,
EXCUSED & NOT VOTING: Kualii	TOTAL – 1.

Council Chair Furfaro: Six ayes, next item please.

LEGAL DOCUMENT:

C 2012-349 Communication (08/15/2012) from the Housing Director, recommending Council approval of the following to allow the County to complete its due diligence and possible acquisition of two vacant parcels located in Līhu'e, Kaua'i, Hawai'i (Parcel 1-4203 Malama Street, Līhu'e, TMK: (4) 3-6-09-01 and Parcel 2-(2914 Kalena Street, Līhu'e, TMK: (4) 3-6-04-09), being considered for development of Affordable Housing for the Elderly: a. Right-Of-Entry by Westridge Properties LLC.

Mr. Bynum moved to approve C 2012-349, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Vice-Chair Yukimura?

Ms. Yukimura: It is my understanding this is just approval of a right of entry. It is not approval for acquisition, and I guess we can have the County Attorney come forward. As I read the Right-of-Entry, I do not think we are committing ourselves to acquisition and it is not that I necessarily disapprove acquisition, I just do not think we should make such an action without having Housing here and without having a suitable discussion. And apparently for need of right of entry, they are needing to actually continue the exploration that is part of the due diligence. So I am assuming there will be another point of decision-making for this.

Council Chair Furfaro: That is correct, it is my understanding and what you are looking at is a Right-of-Entry, but I heard your request for the County Attorney to come up. And therefore, may I request for the County Attorney – I am sorry, I did not know who was going to be here, Al. Thank you.

There being no objections, the rules were suspended.

ALFRED CASTILLO JR., County Attorney: Good afternoon, County Attorney Al Castillo. How may I help you?

Ms. Yukimura: Hi, I just want to clarify this is not a vote on approval of purchase of property.

Mr. Castillo: Council Chair, can we have a recess, please?

Council Chair Furfaro: Sure. Should I bring over the Housing people now, although we are going to come back on another item later?

Mr. Castillo: I just need to clarify something first.

Council Chair Furfaro: Do you want Housing here?

Mr. Castillo: No, thank you.

Council Chair Furfaro: We are going to take a ten minute recess.

There being no objection, the meeting was recessed at 2:01 p.m.

The meeting reconvened at 2:06 p.m., and proceeded as follows:

There being no objections, the rules were suspended.

Council Chair Furfaro: Mr. Castillo, a question was posed to you and I interpret it as our ability to go on the property for evaluations and so forth. And whatever the outcome is, you will be coming back with an item for us.

Mr. Castillo: Yes, that is correct, your understanding and recital of my understanding is correct also.

Council Chair Furfaro: Vice-Chair, do you have any more questions for the County Attorney?

Ms. Yukimura: No, thank you very much.

The meeting was called back to order, and proceeded as follows:

Council Chair Furfaro: Thank you. Members, anyone in the audience to testify for this? Seeing no one, the meeting is called back to order. The action we are taking is to approve the Right-of-Entry.

The motion to approve C 2012-349 a. was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL: None	TOTAL – 0,
EXCUSED & NOT VOTING: Kualii	TOTAL – 1.

Council Chair Furfaro: Next item please.

CLAIMS:

C 2012-350 Communication (07/31/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Alamo Rent-A-Car, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

Mr. Chang moved to refer C 2012-350 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Bynum.

Council Chair Furfaro: Any further discussion? Councilmember Yukimura?

Ms. Yukimura: Yes, Mr. Chair, thank you. I had a chance to review these claims, they are troubling and I know that this has to go through a process. But I would like to just ask that when we send over the claims, we ask that Risk Management be involved in reviewing them. They seem to show some issues there that need to be addressed.

Council Chair Furfaro: We have made that request in the past. So we will reaffirm our desire to have them present.

Ms. Yukimura: Thank you.

Council Chair Furfaro: Further discussion? Anyone in the audience want to give testimony? Seeing no one, all those in favor to send this to the County Attorney for evaluation?

Mr. Rapozo: Only item 350; right? Correct? Because Mr. Chair, I will be asking for briefings on two of them. So when we get to the item.

Council Chair Furfaro: Okay. So again, all those in favor of moving to the County Attorney signify by saying aye?

The motion to refer C 2012-350 to the County Attorney's Office was then put, and unanimously carried.

C 2012-351 Communication (08/01/2012) from the Deputy County Clerk transmitting a claim filed by Keith K.H. Young and Sylvia J. Luke, Cronin, Fried, Sekiya, Kekina & Fairbanks, on behalf of their client Jeffery Sampoang, for personal injury, pursuant to Section 23.06, Charter of the County of Kaua'i.

Mr. Rapozo: Mr. Chair?

Council Chair Furfaro: Mr. Rapozo you have the floor.

Mr. Rapozo: I will move to refer to the County Attorney for review and disposition and also to have this returned back on Executive Session agenda and let us say in a month, so we can get the appropriate agencies give us a summary. I had a chance to read the claim and it is not very clear. So I want more clarification in an Executive Session.

Council Chair Furfaro: Second on Mr. Rapozo's motion?

Mr. Rapozo moved to refer C 2012-351 to the County Attorney's Office for disposition and/or report back to the Council and schedule an Executive Session briefing on it in 4 weeks, seconded by Ms. Nakamura, and unanimously carried.

Council Chair Furfaro: Mr. Rapozo I will state in four weeks?

Mr. Rapozo: Yes, sir.

C 2012-352 Communication (08/06/2012) from the Deputy County Clerk, transmitting a claim filed by Enterprise Damage Recovery Unit, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

Mr. Rapozo moved to refer C 2012-352 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Nakamura, and unanimously carried.

Council Chair Furfaro: Small housekeeping note, I spoke in regards to item 351 as coming back in four weeks, it will have to come back in five weeks due to our calendar. May I modify that? Everybody okay with that? Thank you very much. So let us go to 353.

C 2012-353 Communication (08/08/2012) from the Deputy County Clerk, transmitting a claim filed by Verna Rita, for personal injury and personal property damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

Mr. Rapozo moved to refer to the County Attorney's Office for disposition and/or report back to the Council and request an Executive Session in five weeks to get a briefing from the Administration as to a summary of the events, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Without any further discussion, item 351 along with 353 will come back to the Council in five weeks. All those in favor indicate by saying aye. Now we are going to items for reconsideration.

FOR RECONSIDERATION:

C 2012-354 Communication (08/15/2012) from Councilmember Chang and Councilmember Yukimura, requesting a reconsideration of the vote taken at the August 8, 2012, Council Meeting on Resolution No. 2012-51, Draft 1, RESOLUTION RELATING TO SMOKE-FREE COUNTY PARKS AND REQUESTING A STATE BAN ON UNDERAGE SMOKING.

Mr. Rapozo moved to receive C 2012-354 for the record, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Any nays? Seeing none, so generally we need to take up after that motion, the item to be reconsidered as taken up right now.

RESOLUTIONS:

Resolution No. 2012-51, Draft 1, RESOLUTION RELATING TO SMOKE-FREE COUNTY PARKS AND REQUESTING A STATE BAN ON UNDERAGE SMOKING.

Mr. Chang moved to reconsider the vote taken in Resolution No. 2012-51, Draft 1, seconded by Ms. Yukimura.

Council Chair Furfaro: Okay. Now if there is appropriate time to speak of the rationale for the reconsideration, I will recognize Vice-Chair Yukimura.

Ms. Yukimura: Thank you, Mr. Chair. I want to thank Councilmember Chang for making the motion. And I -- so right after we voted on the resolution in the last meeting I realized I had been so focused on the merits of the Ordinance versus the Resolution that I had forgotten about the other values by which this Council operates, such as lōkahi, which is unity and aloha. So while I do not believe that the Resolution will bring about the changes that we are looking for, especially with the urgency expressed by the whereas clauses, I do -- I do not think it will do any harm and it is a non-binding request to the people of Kaua'i, a place here I think we can stand in unity on. And so it is my desire to change my no-vote to a yes-vote. And I would appreciate the chance to do that.

Council Chair Furfaro: Members, any further discussion? So on this motion to reconsider, I would like for all purposes to take a roll call vote.

Council Chair Furfaro: Is there anyone that wants to make any statement before I go to roll call vote?

Ms. Nakamura: Just a statement that I believe the reconsideration provision in the rules is for the member asking for reconsideration to change his or her vote. I think that is the main purpose of that provision. And I do not know, but I do not think that Councilmember Chang would like to change his vote on this resolution. I do not know, but I just think that while the purpose is honorable, I do not know if this is the appropriate tool to do this.

Council Chair Furfaro: Mr. Rapozo?

Mr. Rapozo: I would agree. I think if you read Robert's Rules, the motion to reconsider is really geared for someone who voted and then

came across new information, and I think the example given in Robert's Rules is pertaining to funding that a specific Board Member did not realize that they had the funding and after the vote realized that the funding was available and in that case would like to change their vote and that person would have been on the winning side. So in other words, the vote that was taken at the meeting was on a winning side. However, funding was not granted. Because they did not have the information. So I am very hesitant to support this, because I do not want to see a precedent set that any time Councilmembers vote and for whatever reason thinks about it and changes the vote utilizing this very, I think, it is an important part of the rules, but it is reserved for very specific circumstances. And in this one, I do not believe it really fits the rules stated in Robert's Rules. So I do not want to see a precedent. We spent so much time on this Resolution and this Bill. We spent so much time and I think it is important for the public to understand that our poor staff has to type verbatim minutes. And when you reopen that box, it is just more work for our staff. I will not be supporting the motion to reconsider, and if it passes, I will obviously be supporting the resolution.

Council Chair Furfaro: Let me reconfirm with Councilmember Chang, who voted in the affirmative, you voted to have this reconsideration?

Mr. Chang: Yes.

Council Chair Furfaro: Vice-Chair Yukimura?

Ms. Yukimura: I am not sure. I may be in error in understanding the motion to reconsider, but I hope – I mean it truly was my desire to make it a unanimous thing and not to open up any more debate. And I am hoping that in the whole spirit of aloha, we will not get really technical about this. But if the Council so chooses, then I am not able to change my vote, that is okay too. I just thought that we were a special Council in trying to be unanimous wherever we could be, and that was my only motive for asking for this reopening.

Council Chair Furfaro: Any further discussion?

Mr. Rapozo: I will just say there was an opportunity to be unanimous at the meeting and you chose not to.

Ms. Yukimura: And as I mentioned, I was so focused on -- I really did wake up and Councilmember Bynum will testify to that fact that during the meeting I was thinking of asking for a reconsideration at the end of the meeting, but I wanted to think it through to make sure, and a day after I told the Chair that is what I wanted to do. So it is not a -- I mean, you all know where I stand. It is not an effort to change my position on the Bill. It is my effort to have a unanimous request to the people of Kaua'i. That is truly what I wanted. And I thought of it because of the values that I think we are all trying to live by.

Council Chair Furfaro: Mr. Bynum, did you want to say anything?

Mr. Bynum: As well, we had a Bill that was not successful, the resolution was put forward as an alternative to that Bill. I do not believe that the resolution will have any real impact the way it is written, but there is no harm in there either. That is why when the vote came, I stayed silent and went down with an affirmative vote. I do not disagree with Councilmembers Nakamura or Rapozo that normally the intent of reconsideration is someone who

wants to change their vote, but I think it is a mechanism that we can use to honor Councilmember Yukimura's desire to have it go down as a unanimous vote. I do not think it is a misuse or illegal or improper based on her request, I will vote to reconsider, but it went down as a 6-1 vote.

Council Chair Furfaro: These are unusual circumstances and I wanted to reconfirm with Councilmember Chang that he is fine with this resolution that is, in fact, passed. But to get an unanimous decision there is an opportunity to get the two values we live by, kōkua and aloha. I wanted to let you also know that I fully respect what Councilmember Nakamura and Councilmember Rapozo are saying and I would like to correct it, we had an opportunity twice to all get close to the same agreement, but I will be supporting the reconsideration. But I want to make sure that Mr. Rapozo and Councilmember Nakamura know that and please note that the Chairman recognizes your concern.

Mr. Rapozo: I just want to make one quick comment, it relates to pono and lōkahi, that I have sat here, Mr. Chair, and I have been on the short side of a motion to defer to cut debates so I could not speak, and that is the process and I respect that because it is a rule. That is what I am saying here. It is not anything personal. I think the motion to reconsider is reserved for special situations where the person who makes the motion wants to change his or her vote. I appreciate all the lovey lovey talk about lōkahi and stuff, but let us practice it twenty-four seven. That is my only comment.

Council Chair Furfaro: I agree and I want to make sure you understand, I did not use the value lōkahi, I used the value of kōkua and aloha and I know you were not speaking to me, but I am asking as Chair let us get over this piece here, and I agree lōkahi is important, but this is about kōkua. Mr. Chang?

Mr. Chang: I guess I just want to say, I apologize I did not know the rules, did not know the mechanism, and I was hoping that I could help out a fellow Councilmember in the spirit of aloha and kōkua. I just thought it was a request. I did not feel that -- I just thought it would be great to get unanimous consensus. That is why I was happy to support the request for Councilmember Yukimura. Thank you.

Council Chair Furfaro: Thank you, Mr. Chang and again, you were the one who voted in the affirmative, you have the opportunity to make the motion for reconsideration and I want to make sure I understand for the purposes for kōkua. So I would like to go ahead and call for a vote. Let us do a roll call vote.

The motion to reconsider Resolution No. 2012-51, Draft 1, was then put, and carried by the following vote:

FOR RECONSIDERATION: Bynum, Chang, Yukimura,	
Furfaro	TOTAL – 4,
AGAINST RECONSIDERATION: Nakamura, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING: Kualii	TOTAL – 1.

Ms. Yukimura moved to approve Resolution No. 2012-51, Draft 1, seconded by Mr. Rapozo.

Council Chair Furfaro: Motion to approve by Vice-Chair Yukimura and second by Councilmember Rapozo. I will give the floor to any member who

wishes to discuss this Resolution and its vote before we vote. Councilmember Nakamura?

Ms. Nakamura: I just want to say that the person who introduced this Resolution is not here today. I think he would have been very happy to have supported it, but because it is being reconsidered now for the sake of Councilmember Yukimura, he cannot vote in favor of this resolution and it will not be unanimous.

Council Chair Furfaro: Okay. Anybody else wants the floor?

Ms. Yukimura: Yes, Mr. Chair. We can defer this for another meeting so that he can be present.

Council Chair Furfaro: I could have voted no and we would have had it gone back two weeks from now. I did my vote in recognizing kōkua. So I am not willing to share anything more than that right now, folks. I understand the point. The point was well taken by Councilmember Nakamura, but let us move on.

Mr. Rapozo: I will call for the question.

Council Chair Furfaro: Thank you. Calling for the question, can I have a roll call vote, please?

The motion to approve Resolution No. 2012-51 Draft 1, was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Nakamura, Rapozo,	
Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL: None.	TOTAL – 0,
EXCUSED & NOT VOTING: Kualii	TOTAL – 1.

Council Chair Furfaro: And thank you Mr. Rapozo and Councilwoman Nakamura. I have a bit of a dilemma. We have our insurance broker here for what we thought would be a 2:30 p.m. meeting. Could I ask you to come up to the mic and introduce yourself, please?

There being no objections, the rules were suspended.

RON BRANDVOLD, Third Party Administrator: Good afternoon. Ron Brandvold, we are your third-party administrator for your claims program.

Council Chair Furfaro: We are getting ready to wrap up the Council Meeting in next half an hour, are you okay with that?

Mr. Brandvold: Fine.

Council Chair Furfaro: Okay we are going to continue and plan to go to you. Thank you very much.

The meeting was called back to order, and proceeded as follows:

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2444) – A BILL FOR AN ORDINANCE AMENDING SECTION 5A-6.3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX.

Mr. Chang moved to approve Proposed Draft Bill (No. 2444) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 26, 2012, and that it thereafter be referred to the Finance/Parks & Recreation/Public Works Committee, seconded by Mr. Bynum, and carried by the following vote:

Council Chair Furfaro: Okay. We have a motion and second. Is there anyone in the audience that wishes to testify on this first reading? If not, members, the motion has been made for a referral on September 26, all those in favor, signify by saying aye?

FOR PASSAGE: Bynum, Chang, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE: None.	TOTAL – 0,
EXCUSED & NOT VOTING: Kualii	TOTAL – 1.

Mr. Rapozo: Council Chair, did we skip the committee reports?

Council Chair Furfaro: Yes.

Mr. Rapozo: Okay, I thought I may have fallen asleep for a bit.

Proposed Draft Bill (No. 2445) – AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (\$310,000.00 – Transportation Agency, Vehicles Automobiles).

Mr. Chang moved to approve Proposed Draft Bill (No. 2445) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 26, 2012, and that it thereafter be referred to the Housing/Transportation/Energy Conservation & Efficiency Committee, seconded by Mr. Rapozo.

Council Chair Furfaro: Any discussion, Mr. Rapozo?

Mr. Rapozo: Mr. Chair, I am going to reserve most of my comments for the Committee Meeting, but I do want to voice my concern that this is, I believe, the third money bill going into the new year. We are two months into the fiscal year and all of these available funds are surfacing, and I realize that it is important that we need this twenty percent match to buy some buses, but these are substantial amounts that are being requested to be taken out of surplus funds and it is a concern of mine. That was one of the reasons that I asked to have the financial reports deferred to the Committee, because I am getting really, really concerned that the budgeting practices were either over-budgeted, so we can accommodate these requests. But it is substantial amounts of money and again, like I said, in the second month of the fiscal year, and yet, we have identified these funds as being available. So again, I will reserve most of my comments for the Committee Meeting, but I will support the first reading to get it to a public hearing.

I was contemplating not supporting it, but I will. I do want to investigate a little further, but it is of concern the amount of available funds we have just two months into the budget. Thank you.

Council Chair Furfaro: I want to point out something to all of you folks when we come to these conditions; we have a Charter amendment that is going down that would review that the Council would expect the Administration to present to us their Operating Budget one time. I want to make sure that you understand the consequences of that. That means every change that occurs after the one visit will then be the burden of the Council and the staff. It does not go back to the Mayor. It becomes the burden of our staff to go into the AS400 and make the appropriate entries. It is totally a one-time submittal and that is exactly why we have two submittals. okay? We get a first blush look and then we get a second and final review. So I just want to point that out. And I dug into this, too, Mr. Rapozo. Those are great questions, but there seems there is \$2.8 million available for buses and we only budgeted \$310,000.00. So we are requiring this extra money to actually expand the matching funds for the Federal and State money that is coming to us. Those should be questions kept for the Committee, but that is how it has been presented to me. Go ahead. Great question.

Mr. Rapozo: And I appreciate you looking into it too, and I understand that. I understand that I believe our portion is \$600,000.00 or whatever it is to meet the Federal.

Council Chair Furfaro: \$620,000.00.

Mr. Rapozo: Correct. My question is that this is only two months in and we should have budgeted for this. I guess with the one-time submittal from – hopefully that passes and I am hoping that everybody supports that, so when we get the budget on March 15, then it is incumbent on this Council to set the restrictions, and even in a situation like this, I am not convinced that I will support it because it is taking it out of surplus. If, in fact, the Administration needs \$300,000.00, take it out of your existing budget. That is how we send the message across and say, “Hey you better start budgeting properly” and at the end of the year, if we end up with a huge surplus, maybe we return it to the people. We continue to do this and Administration over-budgets on certain items and throughout the year they just come back and say, “Can we get another \$300,000.00, \$400,000.00?” And reality is, they knew it all along that the budget was fat and it is almost like a slush fund and that is the part that bothers me. You are right, Mr. Chair, it is the burden of this body.

Council Chair Furfaro: I just wanted to point that out, it is a Charter proposal and therefore, it was worth commenting on now. Again, this is extra found money at this point in time through the Federal and State grants, and they need this extra money to match if we were going to fully leverage that deal. So did we have a date for this? September 26. Okay. So I am looking for approval on this. This will be roll call. Madame Clerk, roll call, please.

The motion for passage of Proposed Draft Bill (No. 2445) on first reading was then put, and carried by the following vote:

FOR PASSAGE: Bynum, Chang, Nakamura, Rapozo,
Yukimura, Furfaro
AGAINST PASSAGE: None.

TOTAL – 6,
TOTAL – 0,

EXCUSED & NOT VOTING: Kualii

TOTAL – 1.

Council Chair Furfaro: Lonnie, we have taken the vote, but I did not see your hand until just as we were going around the table. This item will come back on the 26th of September. Is that acceptable to you, sir? This is typically how we do first reading.

Mr. Sykos: Yes.

Council Chair Furfaro: Thank you very much, I will watch for your email. Bills for second reading.

BILLS FOR SECOND READING:

Bill No. 2433, Draft 1 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO AMENDING THE COMPREHENSIVE ZONING ORDINANCE IN ITS ENTIRETY.

Council Chair Furfaro: I am going to recognize Committee Chairwoman Nakamura at this point.

Ms. Nakamura: Chair, it has been brought to my attention that the Planning Department would like to further amend this Bill to give it a time-definite date for enactment. They would like a two-week deferment, two meetings.

Council Chair Furfaro: Four weeks.

Ms. Nakamura: Excuse me, four weeks.

Council Chair Furfaro: Two meetings, okay.

Ms. Nakamura: Thank you. Excuse me. Two-meeting deferment to give them the time to go through the document to make the necessary changes.

Council Chair Furfaro: To the Clerk, do we have a date specifically if we do defer this Bill? September 26. Mr. Rapozo?

Mr. Rapozo: Is it substantive changes to content of the sections? I am directing my question to the Chair.

Council Chair Furfaro: Well, I am directing it to the Chair of the Planning, because this is the first that I am hearing of it. Okay. I would like to give the floor to the Chairman of the Planning Committee who might be able to touch on the request for some additional time by Planning. You have the floor.

Ms. Nakamura: Just to respond to Councilmember Rapozo's question, there are numerous instances in the Comprehensive Zoning Ordinance where date changes are -- where references to dates need to be updated. So that is the reason for the request.

Council Chair Furfaro: Okay, satisfactory response. Again, I was given a quick briefing this morning on the same item as it deals with critical periods

and dates so that brings us to September 26, is that correct? So I would like to defer this item to September 26. That is the motion I am looking for.

Mr. Bynum moved to defer Bill No. 2433, Draft 1, seconded by Ms. Yukimura, and unanimously carried.

Council Chair Furfaro: Thank you very much.

Ms. Yukimura: Mr. Chair? Before we go into Executive Session, I would like to ask for a moment of personal privilege?

Council Chair Furfaro: I will give it to you as soon as we finish the rest of the housekeeping items.

Ms. Yukimura: Very good, thank you.

Council Chair Furfaro: Committee Reports as mentioned, as a reminder from Mr. Rapozo, we are going to get those reports approved.

PLANNING COMMITTEE REPORTS:

A report (No. CR-PL 2012-05) submitted by the Planning Committee, recommending that the following be received for the record:

“PL 2012-03 Communication (08/07/2012) from Committee Chair Nakamura, requesting the presence of the Planning Director to participate in a brief workshop/discussion which is intended to provide a timeline relating to the update of the Comprehensive Zoning Ordinance (CZO), and to discuss the next steps that will be undertaken by the Planning Department,”

Mr. Chang moved for approval of the report, seconded by Mr. Rapozo, and unanimously carried.

A report (No. CR-PL 2012-06) submitted by the Planning Committee, recommending that the following be Approved, as amended, on second and final reading:

“Bill No. 2433 - A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO AMENDING THE COMPREHENSIVE ZONING ORDINANCE IN ITS ENTIRETY,”

Mr. Chang moved for approval of the report, seconded by Mr. Rapozo, and unanimously carried. (See later for Bill No. 2433, Draft 1)

Council Chair Furfaro: I want to make sure again that you folks heard me, since the IGR Chairman is absent today, he did submit and as I mentioned earlier, two letters – one is on his absentee and one on his recusal for the record on the previous Bills.

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORTS:

A report (No. CR-IGR 2012-02) submitted by the Intergovernmental Relations Committee, recommending that the following be Approved for inclusion in the 2013 County of Kaua'i and HSAC Legislative Packages:

“Communication (08/09/2012) from Councilmember Yukimura, requesting agenda time to discuss proposed amendments to § 46-15.1, Hawai‘i Revised Statutes, relating to affordable housing credits, and to approve its inclusion in the 2013 County of Kaua‘i and Hawai‘i State Association of Counties (HSAC) Legislative Packages,”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried.

A report (No. CR-IGR 2012-03) submitted by the Intergovernmental Relations Committee, recommending that the following be Approved as amended for inclusion in the 2013 County of Kaua‘i and HSAC Legislative Packages:

“Communication (08/07/2012) from Councilmember Yukimura, requesting agenda time to discuss proposed amendments to § 196-6.5, Hawai‘i Revised Statutes, requiring solar water heating on new construction of single-family and duplex homes, and to approve its inclusion in the 2013 County of Kaua‘i and Hawai‘i State Association of Counties (HSAC) Legislative Packages,”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: Any nays? Seeing none, let us go to the next item, Intergovernmental Relations and I want to make sure again that you folks heard me since the IGR Chairman is absent today, he did submit and as I mentioned earlier, two letters. One is on his absentee and one on his recusal for the record on the previous Bills, go ahead.

CR-IGR 2012-02 Communication (08/09/2012) from Councilmember Yukimura, requesting agenda time to discuss proposed amendments to § 46-15.1, Hawai‘i Revised Statutes, relating to affordable housing credits, and to approve its inclusion in the 2013 County of Kaua‘i and Hawai‘i State Association of Counties (HSAC) Legislative Packages.

CR-IGR 2012-03 Communication (08/07/2012) from Councilmember Yukimura, requesting agenda time to discuss proposed amendments to § 196-6.5, Hawai‘i Revised Statutes, requiring solar water heating on new construction of single-family and duplex homes, and to approve its inclusion in the 2013 County of Kaua‘i and Hawai‘i State Association of Counties (HSAC) Legislative Packages.

Mr. Rapozo moved to approve CR-IGR 2012-02 and CR-IGR 2012-03, seconded by Mr. Chang, and unanimously carried.

Council Chair Furfaro: I think we have come to a conclusion here. And on that note, before we conclude the meeting, I am going to give a moment of personal privilege to Vice-Chair Yukimura.

Ms. Yukimura: Thank you, Mr. Chair. I just want to read one sentence in the Robert’s Rules of Order regarding Reconsideration on page 305, and it says when a Member who cannot move a reconsideration believes there are valid reasons for one, he should try, if there is time or opportunity, to persuade someone who voted with the prevailing side to make such a motion. So I just want

to say that I think we acted in accord with the rules and have been very transparent in terms of trying to seek a motion to reconsider. Thank you.

Council Chair Furfaro: Again, I reconfirmed with Mr. Chang that was his intent, since he voted in the affirmative. I believe we could call up the County Attorney now. Could we have the County Attorney up, please. May I ask you to introduce yourself and then announce the purpose of us going into Executive Session.

There being no objections, the rules were suspended.

MARC GUYOT, Deputy County Attorney: Certainly Chair, Deputy County Attorney Marc Guyot. We are here for Section N of your agenda, the Executive Session. As ES-565, 566 and 567 are all in the same topic, I will read one for all three, if that is all right with you Chair?

Council Chair Furfaro: That is acceptable.

EXECUTIVE SESSION:

ES-565 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter §3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-566 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter §3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-567 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter §3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

Council Chair Furfaro: Your reason for reading them all because they deal with compensation, et cetera, but it is my advice from the Deputy County Clerk that you read all three.

Mr. Guyot: It is my pleasure, Chair.

Council Chair Furfaro: Thank you. Are you handling only the first three?

Mr. Guyot: Yes, I am, Chair.

Council Chair Furfaro: Is another Attorney handling 564 and 565?

Mr. Guyot: Yes, they are, Chair. That would be Deputy County Attorney Justin Kollar, on ES-568. And ES-569, as it is not mine, I am sure it is another Deputy County Attorney's.

Council Chair Furfaro: Would you have a problem if I asked you to read the next two items. I do not want to go into Executive Session and then come back and re-adjourn the meeting and get the captioner back, go back in again. So could you read the next two.

Mr. Guyot: My pleasure, Chair.

ES-568 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide Council with a briefing and request for authority to settle claim against the County by Lebeau Lagmay, filed on November 17, 2011, and referenced in Civil No. CV11-00749 ACK KSC (U.S. District Court), as Lebeau Lagmay vs. Eric Caspillo, Individually and in his Capacity as Police Officer for the County of Kaua'i, Kaua'i Police Department; et al., and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-569 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide Council with a briefing and request for authority to settle claim against the County by Duane T. Souza, filed on March 25, 2008, and referenced in Civil No. 08-1-0065 (Fifth Circuit Court), as Duane T. Souza vs. County of Kaua'i, et al., and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Furfaro: Thank you very much. And I do intend to do Brandvold first on the workers' compensation items. Thank you. I will ask you to step away from the stand. Is there anyone who wishes to give testimony about the Council's intent to go into Executive Session? Lonnie, please come up.

Mr. Sykos: For the record Lonnie Sykos, thank you, Mr. Chair. The matters that you will discuss in Executive Session are of course in Executive Session because they cannot be discussed in public. What is of great importance to the public is the frequency and the expense of workers' compensation claims. Our direct concern is that the County pays Loss-Prevention Officers and the County pays Human Resource personnel and we do not know whether or not they

are doing their jobs because we are not privy to the details of these events that occur. But the request from myself as a member of the public, as these issues resolve themselves, that the public needs to be informed not of the specifics and the identities of the individuals, but of the actuality of what are the risks that are not being mitigated that result in the settlements that we have to make. And so I encourage the County Council, as you go through this process, to look at how risk can be mitigated, and what can be done either by the Council or by the public to encourage the Administration to move forward with addressing the Human Resources and Loss-Prevention issues that are being addressed today. Thank you.

Council Chair Furfaro: Thank you, Lonnie, and I will point out to you that we do have the beginning of a Human Resource Department. We do have a Loss-Prevention Manager and we do have a Loss-Run Report. They could be available to you at certain levels by going to the Administration, because those are public records on cost of the premiums, settlement amounts, and so forth. But they would have to redact any personnel or personal information from them. So again, Janine Rapozo is our H.R. Manager, and Gerald does our Loss-Run Summary, and you can find both of those individuals in the Administration.

Mr. Sykos: And the report again, please?

Council Chair Furfaro: It is called a Loss-Run Report, but it would have to redact names and personnel information.

Mr. Sykos: Terrific, thank you very much.

Council Chair Furfaro: Lonnie, we have a question for you.

Ms. Yukimura: I just wanted to add to the Chair's comments that this Council has been very concerned about risk and that is why my comments earlier and mine saying earlier that we have in the past asked for Risk-Management to be part of the Executive Sessions or part of the reports back because those are our concerns actually.

Mr. Sykos: Correct. It is the Administration's responsibility for this and you just provide oversight and I understand that. I am not accusing the Council of failing to perform oversight at all. I think you are doing a good job. Thank you.

Council Chair Furfaro: Thank you for that compliment, but what I think the Vice-Chair was pointing out is that we hope when we go into these with Brandvold and such, we have a Loss-Run Manager available to us. Thank you. Is there anyone else who wishes to testify on these items today?

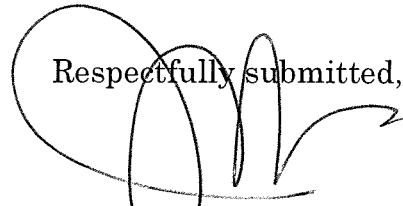
The meeting was called back to order, and proceeded as follows:

By unanimous vote (Mr. Kualii'i excused), the Council approved to convene in Executive Session to discuss ES-565, ES-566, ES-567, ES-568, ES-569 at 2:56 p.m.

There being no objections, the Council was in recess at 2:56 p.m.

ADJOURNMENT.

The meeting reconvened at 4:43 p.m., and there being no further business, the meeting was adjourned.

Respectfully submitted,


JADE FOUNTAIN-TANIGAWA
Deputy County Clerk

cy